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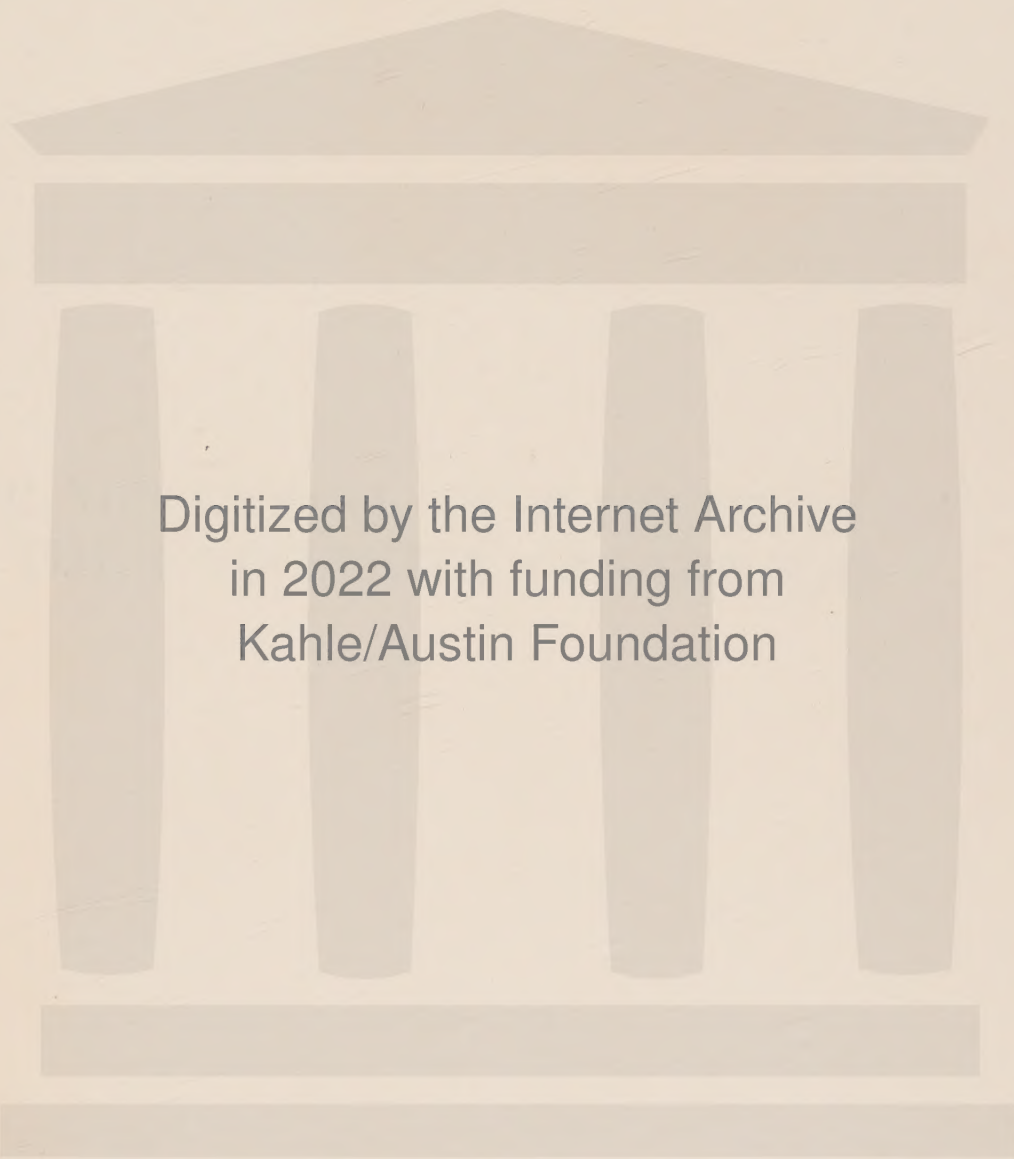
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TO THE MEN AND WOMEN

OF OUR TIME AND COUNTRY WHO BY WISE AND GENEROUS GIVING

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IN ALL DEPARTMENTS OF KNOWLEDGE





## INVESTIGATIONS





THE UNIVERSITY OF CHICAGO  
FOUNDED BY JOHN D. ROCKEFELLER

# INVESTIGATIONS REPRESENTING THE DEPARTMENTS

POLITICAL ECONOMY POLITICAL SCIENCE HISTORY  
SOCIOLOGY AND ANTHROPOLOGY

THE DECENNIAL PUBLICATIONS  
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114

## CONTENTS

I. CREDIT - - - - -	1
By JAMES LAURENCE LAUGHLIN, Professor and Head of the Department of Political Economy	
II. THE USE OF LOAN CREDIT IN MODERN BUSINESS - - - -	29
By THORSTEIN B. VEBLEN, Assistant Professor of Political Economy	
III. THE PHYSICAL CHARACTERS OF THE INDIANS OF SOUTHERN MEXICO -	51
By FREDERICK STARR, Associate Professor of Anthropology	
IV. THE SIGNIFICANCE OF SOCIOLOGY FOR ETHICS - - - - -	111
By ALBION W. SMALL, Professor and Head of the Department of Soci- ology	
V. STUDIES CONCERNING ADRIAN IV. - - - - -	151
By OLIVER J. THATCHER, Associate Professor of Mediæval and English History	
VI. THE RELATION OF THE MEDICINE-MAN TO THE ORIGIN OF THE PRO- FESSIONAL OCCUPATIONS - - - - -	239
By WILLIAM I. THOMAS, Associate Professor of Sociology	
VII. EMPIRE AND SOVEREIGNTY - - - - -	257
By ERNST FREUND, Professor of Law	
VIII. THE DECLINE OF THE MISSI DOMINICI IN FRANKISH GAUL - - -	289
By JAMES WESTFALL THOMPSON, Instructor in European History	
IX. THE ESSENTIAL ELEMENTS OF A WRITTEN CONSTITUTION - - -	311
By HARRY PRATT JUDSON, Professor of Comparative Politics and Diplo- macy, and Head of the Department of Political Science	





## CREDIT





## CREDIT

J. LAURENCE LAUGHLIN

One has only to turn to the discussions on currency and credit which have accompanied the great development of England's commerce during the last half-century to see how the changing needs of an advancing society evolve new problems for the economist, and call forth new growths of economic doctrine.—CAIRNES, *Character and Logical Method of Political Economy*, p. 39.

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1. THE prominence necessarily given to the time element in discussing the standard of deferred payments is, in reality, the very characteristic by which modern industry has come to be sharply distinguished from that of primitive conditions. When there was no division of labor, exchanging of goods and the creation of obligations were at the minimum; but the changes introduced by the modern complexity and interdependence of industrial processes, by the division of labor, and by the development of vast operations merely in supplying raw materials for commodities to be finished for the consumer a considerable time ahead—all these influences have brought it about that most large transactions of today necessarily involve a time element.

Moreover, as this tendency has become more pronounced, the function performed by capital has grown to be more and more important. Capital is used as a means of discounting the future; it bridges the operations, for example, beginning with the planting of wheat and ending in the distribution of bread to the consumer. As economic civilization has advanced, as the time element has appeared more generally in processes having as their aim greater productivity, so capital, as it has become more vitally necessary, has become more efficient. Without being led afield into a discussion of capital, which would be alien to this treatment of credit, it is clear how essential to the understanding of credit is a grasp of the fundamental services of capital to

society. So far as it is a means of bringing present goods to the service of producers whose efforts end in the future, the function of capital is self-evident.

With the division of labor, the marvelous inventions of machinery, the prolongation of industrial processes (so that a unit of product can be more cheaply sold in the end), the growth and prodigious increase of all forms of capital as a help to this movement have naturally led to the evolution by society of the practical means by which men of affairs, when preparing for the future, are enabled to obtain control of property and capital in productive efforts with the least waste of efficiency. As a part of this evolution, as a practical means to an end involving futurity, credit has come into existence. In its simplest terms, it is a transfer of commodities involving the return of an equivalent at a future time;<sup>1</sup> but subsequently it developed into something more than that—which it will be my purpose to explain later. Credit is machinery invented to aid in accomplishing the purposes of capital; if an essential function of capital is to discount the future, the essential characteristic of credit is the element in it of futurity. The connection is not far to seek.

To get credit, therefore, is to obtain a transfer to one's self of commodities under an obligation (variously expressed, according to different habits and circumstances) to return an equivalent amount at a fixed date in the future. A careful analysis of popular uses of the word "credit" brings us, in almost all cases, to this ultimate conception. When a man is said to have "good credit," however, we must not confound the reasons for granting credit with credit itself; if he has the means of convincing the lender that he is sure to be repaid, his "credit" is said, in popular usage, to be good. Here we are entering upon the reasons why credit is given, which lie beyond the statement of what credit is.

In defining credit as confidence in the future solvency of a borrower, Nasse criticises Knies for failing to distinguish between credit and credit transactions. But, if credit is regarded as the transfer of goods, there is no such distinction; credit appears

<sup>1</sup>E. NASSE (reviewing KNIES in *Jahrbücher für Nat. und Statistik*, N. F., I, pp. 83-105) points out that the most essential characteristic of credit is not the time intervening between loan and repayment, but the transfer of the right to use property which it effects (p. 85).

KNIES (*Der Credit*, I, p. 68) defines credit as an "exchange in which one party renders a service in the present, while the return made by the other falls in the future." E. NASSE criticised this definition, as emphasizing too much the element of futurity, and gave his own: "Credit is the confidence felt in the future solvency [*Zahlungsfähigkeit*] of a person, which enables him to obtain the property of others for use as a loan, or for consumption" (*op. cit.*, p. 84). JEVONS regarded credit as "nothing but the deferring of a payment" (*op. cit.*, p. 238). LEVASSEUR's definition was: "The exchange of an actual reality against a future probability" (*cf. Question de l'or*, p. 244).

A. WAGNER's definition seems unnecessarily verbose: "Credit is that private economic exchange, or that voluntary giving and receiving of economic goods between different persons, where the service rendered by the first is performed from his confidence in the assurance given by

the second that he will render a recompense at a future time" (*Schönberg's Handbuch*, I, p. 380).

MCLEOD speaks of "a credit as the Present Right to a Future Payment" (*op. cit.*, I, pp. 88, 571).

"Credit," says P. LEROY-BEAULIEU (*Traité théorique et pratique d'économie politique*, 2d ed., III, p. 354), "is the exchange of an actual present good against an equivalent which one engages to furnish within a certain period."

CARLO F. FERRARIS (*Principii di Scienza Bancaria*, 1892, p. 5) regards credit as "the whole of those economic and moral conditions because of which men consent to make payments in the present on the promise of repayment in the future."

L. WALRAS regards "credit as the lending of capital" (*Études d'économie politique appliquée*, IV, p. 305).

J. CONRAD (*Grundriss*, §28, pp. 23, 24) and A. HELD (*Grundriss*, §12, p. 61) make credit a matter of confidence, etc.

E. VON PHILIPPOVICH (*Grundriss*, I, §99, p. 196) makes credit the relation between parties to an exchange "through which the one, by virtue of a service already performed (a transfer of goods, a payment, or work done), may demand from the other a return for the service."

only in a transaction. What is a man's "high credit"? It means that his reputation for repayment is high; that he easily gets a transfer of goods. If we were to accept Nasse's conception, credit might exist without ever being used; for we might have confidence in a borrower's power to repay which he never exercised. Then, an expansion of credit, in this sense, would lead us to the absurdity of saying that with an increase of confidence in borrowers there had been an increase in a country's credit. Of course, there would have been an increase in the possibility of using credit, but that is a different thing from saying that credit itself has been increased; while, from my point of view, an expansion of credit could take place only by transfers of goods to a greater amount. In any other sense, credit seems to be a metaphysical abstraction.

It is desirable, also, to distinguish between credit itself and the forms which arise out of credit transactions. Economic and legal conceptions should be carefully kept apart. The actual transfer of goods is the essential economic part of the credit operation; the promissory notes, drafts, bills of exchange, book entries, and the like are merely the evidences of the credit transactions which have been used to facilitate, in a greater or less degree, repayment, and they differ from each other largely in business convenience and legal force.<sup>2</sup> The readers of economic treatises, however, will find credit usually treated as if it could be covered by an account of the use of notes, checks, and various forms of credit. This, in my judgment, has led to some popular fallacies on credit and money which are difficult to eradicate. The forms of credit will be treated hereafter, when the monetary uses of credit are taken up.

Whenever the time element is eliminated from a transaction, it will be seen at once that credit does not enter into it. A transfer of goods for which an equivalent is rendered on the spot would never be thought of as a credit operation. In fact, buying and selling for an immediate consideration (or "cash") is generally understood to be the very opposite of credit. It has been claimed that confidence and not the time element is the primary element in credit.<sup>3</sup> It is the time element, however, which is essential; the matter of confidence, on the other hand, appears only because the repayment is relegated to the future. Exactly because futurity is the central thing in credit does confidence enter at all as a consequence. But confidence cannot be spoken

<sup>2</sup>To know the law governing bills and notes is a very different thing from knowing the economic principles underlying the operations out of which the legal forms have arisen.

<sup>3</sup>ADOLPH WAGNER ("Der Credit," in *Schönberg's Handbuch*, I, pp. 379-415) follows Knies in emphasizing the time element and regarding confidence as a necessary consequence of it; but Wagner gives the latter some proper importance (pp. 380-93). G. COHN (*Grundlegung*, pp. 551, 552) criticises the emphasis on the time element because it "emphasizes a merely secondary phenomenon which follows from the nature of capital as a durable good; for, since durability belongs to the concept of capital, the use of which is transferred, it is perfectly evident that every

transfer of the right to use capital carries with it the idea that the capital is to be restored later."

M. BLOCK's (*Le progrès de la science économique*, I, p. 481) position is: "We admit freely that confidence plays a large rôle in the matter of credit; without confidence many transactions could not be made; but in other cases it must be said that confidence is more or less, or even totally, absent. Peter comes to Paul, and asks for a loan of 100 francs. Paul has no confidence in Peter and refuses. Then Peter says: 'My watch is worth a good deal more than the 100 francs; you may have it as security; besides, I will pay the usual interest.' Paul, who expresses the value of his capital in money, lends the 100 francs; but confidence had nothing to do with the matter. It is the value of the security which determined his decision."



of as the pivotal thing in credit; although it is influential in deciding whether credit shall be given or not. The difference is wide: walking is one thing, the reasons why one walks (to one's office or to a funeral) are very different. Hence it is well not to assign much importance to the easy etymological derivation of credit from *credere* (meaning "to have confidence").

By general agreement, usage would never allow any obligation entered into for the future delivery of personal services to be spoken of as credit; and rightly. A contract to work ten hours a day for the coming three months should not be regarded as a credit obligation. We may, therefore, agree to confine credit operations to goods or property of a transferable kind. And, in the conception of credit, with the transfer goes the right to make any ordinary use of the goods; it carries with it the power, not merely to keep possession, but to destroy entirely (but always with the purpose of reproduction), if that is the best means of increasing product and getting back goods for repayment. Hence the lease of a house would not be a credit transaction. That is, we have in mind, generally, the transfer of quickly saleable goods, which need not always be returned in kind, but by an equivalent; not the same wheat, or wool, or gold which was borrowed, but the equivalent of them.

Many contracts appear as results of credit transactions. For instance, A borrows the means to finish the building of his house; he obtains certain goods which he inserts into his structure; and he gives a promissory note to B for its repayment, secured by a pledge of his property in the form known to the law as a mortgage. The note and the mortgage are merely the legal methods adopted to make repayment more certain; they are not essential in the credit itself. The real importance should be put on the transfer to A of means returnable to B in the future. Legal and customary forms intended to secure repayment have created different devices in the same community; while the prevailing habits of different countries have given rise to varying methods of obtaining the same result. In one situation, for instance, a book entry, in another a bill of exchange, in another a promissory note, are found most suitable. In short, the circumstances of the loan, the opinions and convenience of the parties to the contract, and the like, may bring into use a great variety of legal forms, all resulting from the primary transfer of goods. The undue insistence upon legal forms<sup>4</sup> arising out of credit draws attention away from the economic processes essential and intrinsic in it to the non-essential and external forms outside of it. The familiar case of a bank loan illustrates this truth: there is the essential element in the transfer of capital to the borrower on an obligation to return an equivalent value at a fixed time in the future; but the evidences of the transaction, whether in the form of a book entry as a deposit, or the passing of the bank's own notes, or the giving of a cashier's draft for the sum, are secondary matters, or consequences, arising out of the original credit operation. As said before, the latter merely form the machinery for

<sup>4</sup> Although McLeod has made many valuable and penetrating observations on credit, in my judgment his great

error exists in the emphasis on legal forms in his prolonged discussion of rights and actions.



obtaining greater or less security with a view to repayment. Actual money, in such cases, will be found to serve only as an intermediary between different amounts of goods. The true relations of credit to money, however, will appear as our subject is developed.

2. Strip any credit operation whatever of its passing and superficial marks, and you will find in its essence that it is a transfer of goods involving futurity. So important is this general proposition that it needs all the elucidation which can be given within our limits; for the reader should be warned that this view is at variance with popular opinion, and even with that of eminent writers. Professor Nicholson, for instance, says that all credit rests on money.<sup>5</sup>

Here please recall the distinction between a standard in which the prices of goods are expressed, and a medium of exchange by which the goods are in fact transferred. Forms of property whose prices are expressed in terms of the standard may be actually exchanged without using the standard-commodity as a medium of exchange. Without anticipating the exposition of the practical aids furnished by modern banking expedients, it can be shown that credit is, in effect, a transaction in goods (expressed in terms of money); that it is granted only because the borrower can give good grounds for delivering the proceeds of (saleable) goods as means of repayment; and that goods form the basis of credit. Money plays only a secondary and minor part, auxiliary to the credit operations. Just as the amount of money is always and necessarily far less than the mass of saleable goods in the market, so the amount of money bears a low ratio to the sum of credit transactions which it helps on. The real object of such operations, as in all production and consumption, is the possession and use of goods which satisfy wants. When a man borrows, he gets the loan in the form of a right to draw a given sum of money; but actual money is of no use to him except so far as it aids him to get the coal, or cotton, or labor he needs in his business. The popular impression that a man borrows "money" is misleading; it is no more than the wrapper in which his goods come to him. As well say that a railway, which carries our wheat, produces wheat. The error resides in confusing the means with the end.

Whenever credit is granted, it will be found that a man has pledged some property he owns, or is believed to own (but to which he still holds the title in case he repays the loan), in return for the present use of means of payment in current funds. We are not now concerned with the particular form of the pledge, whether a single-name note, a note with an indorser, a note with collateral, a bill of exchange, or what not. It usually happens that the borrower has on hand goods, or securities, or saleable property, or the expectation of goods, which he cannot use, in their present form, as general purchasing power. If the manufacturer could turn the stock of harvesters and mowers in his warehouse into means of payment, he could buy more material, employ more labor, and have more machines ready for the next selling season; or, if

<sup>5</sup> *Monetary Problems*, chap. vi. The full discussion of the effect of credit on prices will be given later.

he has sold them to jobbers on time, and if he could get present means of payment for the sums due him in the future, he could enlarge his business. At this point the development of credit comes to his aid. On the basis of property, he gets a loan; credit enables him to utilize his resources without parting with their ownership (except as modified by the pledge); it enables him to change a command over his specific kind of goods into a command over goods in general. It is credit which enables men to coin property into means of payment. It is what Sir James Stewart so well described as "melting down of wealth into bank-money."

Naturally there arises some methodical arrangement for giving credit, by those who have property and capital to loan. Such institutions are usually called banks; although lending may be carried on by individuals. The sums to be loaned, although expressed in dollars, represent goods which lenders are willing to hand over to borrowers on obligations for repayment. Unused funds accumulate in bank deposits, and sums owned by persons unable or unwilling to employ them in production collect in institutions for investment. These goods appear on the deposit-accounts in terms of money; but none of the institutions has money enough to give out for each item of liability. Only specie enough is kept to meet the demands of those suspicious, or frightened, persons who may wish to turn goods into actual cash. Of course, if all wished to do so, none could do it, and general suspension would result. This makes it clear that the real object is to get from goods we have to goods we have not; that money is used only for facilitating this process. But credit is also a very clever device for getting from goods to goods without resorting to the actual transfer of the specie standard (or other money).

A typical loan transaction, containing the essentials of all, may be taken by way of illustration. A business firm sells cotton sheetings to jobbers on ninety days' time to the amount of \$10,000. If confined to the actual capital owned by the members of the firm, their operations would be restricted; but if they can borrow of others additional capital, on the strength of the goods they have sold, they can coin the cotton sheetings held by jobbers into means of payment, and, by purchasing new materials, employ more labor, and increase their product. The sold goods are used as the basis of a loan at a bank. The bank buys the right to receive \$10,000 ninety days from date; the firm gets the right to draw \$10,000 (less discount) on demand. It should be kept clearly in mind that this credit operation, so far, was based on goods, and not on money. Now, whether the borrower will draw out his \$10,000 in specie (or legal money) is a question quite independent of the credit operation; it is a question of the business habits of the community in which the firm exists, whether actual cash, or checks on deposit accounts, are in general use, whether it is a rural or a city district, or whether there is general commercial distrust and panic. These conditions do not have to do with the granting of the credit (except indirectly), but only with the proportions of reserves to liabilities. In most cities, the firm having \$10,000 (less discount) to its credit would buy cotton, purchase machinery, and the like by

drawing checks on its deposit account, not using standard coin at all. That is, it has changed its control over sheetings—one form of goods—to cotton and machinery—other forms of goods more desired at that time. By coining the sheetings into general means of payment at the bank, the firm could direct their purchasing power thus obtained to any kind of article and in any fractional sums.

The service thus rendered to the community by an institution of credit is inestimable. The institution which thus coins saleable property into means of payment for the borrower does so only after deciding that the goods at the basis of the transaction are saleable; that is, that notes, or bills, in the leather trade, for instance, are safe paper to discount. In brief, the act of coining property into immediate means of payment is done on the responsibility of the lender; since if, by any mistake of judgment or honor, the goods behind the paper are not saleable, or if they are not capable of being reached because of error or fraud (or if the collateral, which, after all, is only a title to forms of property, depreciates, it is because of the subtraction of value in the goods on which they are based), the institution pays the scot, and stands the loser.<sup>6</sup> Hence, the process always has this corrective, this brake, that a mistake is followed by loss to the bank, or lender. The lender is, therefore, under a constant pressure of self-interest to see that the goods behind the paper are saleable, and that the proceeds of the sale will appear in amount sufficient to take up the obligation at maturity. The credit institutions, by thus acting, even under a heavy responsibility for inerrancy, enable the community to set into circulation—into the free exchange of goods against goods—a vast amount of property and commodities, which otherwise must remain an inert mass in the hands of owners. By credit operations they enlarge the industrial activity of the very persons most ready and able to act judiciously. If there were no credit, we should not see, as now, individuals and firms enabled to do a business enormously greater than would be possible with only the capital which they actually own. The encouragement of industry, and the enlargement of transactions, are the services rendered by banks and lenders to society. They belong to the class of things, like division of labor and progress of the arts, by which the world has been helped on in its economic growth. Credit is a creation of men in the natural evolution of obtaining the largest possible satisfactions consistent with human intelligence and the character of the globe on which we live.

Notes, bills, drafts, checks, book credits, or any form of obligation resulting from a credit transaction, come into existence, not antecedent to, but as a consequence of, a transfer of goods involving futurity. Paper is purely fictitious and illegitimate which is not the outcome of an operation in goods; and we are enabled to test whether loans are legitimate, or not, according as we know whether the discounts are granted, or not, for actual transfers of saleable goods. This test gives us the means of drawing

<sup>6</sup> As HADLEY (*Economics*, p. 245) says, the bank "may be said to insure credit. If it discounts a three-months' note and allows the maker to draw checks upon the sum with which it credits him, it protects the public, which

accepts such checks, from the risk of subsequent insolvency on the part of the maker. It is because this insurance is effective that the public will accept checks where it will not accept promissory notes."



the line between sound and unsound banking. An increasing amount of notes and other credit instruments may be a direct and legitimate evidence of an increasing amount of transfers of goods; and by credit the transfer may be effected in any expanding quantity. The limit to the increase in legitimate credit operations is always expansible with the increase in the actual movement of goods. The fear of such expansion is groundless, so far as it is based upon goods.<sup>7</sup> Saleable goods transfer themselves with ease and dispatch through credit operations; no one, in fact, ever thinks of waiting until the forms of credit are sufficiently numerous to warrant the exchange of goods before buying and selling. Buying and selling take place first, at prices voluntarily agreed upon; and, secondly, forms of credit arise out of these transactions for an equivalent value, drawn in terms of the monetary denominator (although the latter may never be used at all in the exchange<sup>8</sup> operation).

Starting with credit as a transfer of goods involving an obligation to return an equivalent in the future, we find in practice that credit has in modern society developed into something more akin to money. Clearly enough, it does not act as a standard, or common denominator. Its relation to the subject of money is to be found in the fact that society has in credit created a medium of exchange. It is the natural result of the ever-present premium existing in business transactions to evolve a means of avoiding the risk and loss attending the actual transfer of the valuable standard; and it remains in use because transactions involving futurity are thereby rendered possible and legitimate to the immense advantage of commerce and industry. It is the evolution of a refined system of barter, rendered necessary by division of labor, the interdependence of industries, and the introduction of the time element. A clear understanding that credit is based on goods, that its service is that of a medium of exchange, is necessary to a just treatment of the difficult question of the effect of credit upon the prices of goods, to be discussed later.

The reason for the common belief that credit is based upon, and limited by, money, is evidently to be found in the fact that all the evidences of credit transactions (such as notes, bills, checks, book credits) are drawn in terms of money; and that every business-man assumes that his checks, or deposit account, or bills payable, can be liquidated in money. If this were not so, he reasons, what would be their value to him, in preparing to meet his own obligations? Paradoxical as it may seem, it is absolutely true that the mass of obligations could not possibly be, and were never really intended to be, liquidated in actual money. The fundamental truth is that the quantity (and value) of goods vastly over-passes the quantity (and value) of money; only a portion of the wealth of any community is, or ought to be, invested in its machinery of exchange. Provided that exchanges go on efficiently, the less the

<sup>7</sup>The idea that credit is expanded according to the will of the banker, and that it is capable of undue expansion, without relation to soundness of resources, reflects a confusion between legitimate and illegitimate credit. Excluding fraudulent banking and abnormal credit, the lender obtains full and sufficient value for every liability; his

operations are based on saleable goods. Cf. NICHOLSON, *op. cit.* (p. 74): "There is no limit to the creation of credit substitutes for coin, except the will of bankers, traders, and merchants."

<sup>8</sup>Probably not one bill in 100,000 is ever paid in Money or Bank Notes." — McLEOD, *op. cit.*, I, p. 317.



country's wealth invested in this unproductive form the better. To speak as if a country were better off the greater the amount invested in its money machinery is to glorify the fact of its backward commercial growth; or, as if a farmer could plow better with a plow decorated with costly precious stones, when one worth one one-thousandth as much would do the work perfectly. Just as all the population of a walled city do not wish to pass through its gates at once, whereby a few gates suffice at any one time; so, likewise, not all of the mass of goods are seeking exchange at the same moment, hence the amount of money needed for exchange is, of course, far less than the total amount of goods. This is an economic commonplace.

The reasons why actual cash is needed are not (except in small retail transactions) generally those which have to do with efficiency of exchanges. Men, in the ceaseless circuit of moving goods, getting desired satisfactions by giving one kind of surplus goods for others not possessed, do not care for money itself. Indeed, it is the last thing men really need; since exactly as long as money is held does the owner lose, because money itself is barren. It can, of itself, not give any satisfaction (as, *e. g.*, in Ladysmith during the siege). Therefore, every intelligent manager tries to keep as little money as possible; to the extent that he is obliged to hold it, it earns no interest. Hence the desire to invest it at once; that is, to exchange it for goods, or to set it going in production by buying a share in some productive enterprise.

The final and conclusive evidence that goods, not money, are the basis of industrial operation, is given when, in times of distrust and panic, when almost everyone, wishing to anticipate maturing obligations, tries to turn goods into actual money. Then it is seen that it cannot be done: an *impasse* ensues. And naturally; if there were no fright, no panic, men would not think of struggling for money. That effort arises, not in the normal processes of exchange, but from abnormal conditions of overtrading, misjudgment, and ill-adjusted production, when, at the same time, legal obligations<sup>9</sup> must be met (supposedly) in money. In brief, all transactions cannot be liquidated at once in actual money; and, if it were possible, that is not what would satisfy our daily wants. The best machinery of exchange is that which enables our own product to be most easily exchanged for the various goods which we desire; and money is but one of the means to the end. Credit is, also, an important instrument, or medium, of exchange. Certain reserves of money are necessary parts of the system, to provide against lack of confidence, general distrust, and unreasoning human nature. As McLeod says:<sup>10</sup> "Though in every system of credit there must be an ultimate reserve of specie, yet that ultimate reserve does not bear a constant, fixed ratio to the quantity of credit: but it mainly depends on the organization of credit: the more highly organized the system of credit is, the less is the requisite amount of the ultimate reserve of specie. . . . Any amount of credit may be created and extinguished without any relation to the quantity of money."

<sup>9</sup>On this point, however, it will be found that legal payments themselves are made in the forms customary in the

community, and not even then necessarily in lawful money.

<sup>10</sup>*Op. cit.*, II, pp. 734, 735.

3. Credit will here be treated only in so far as it performs a function of money, and in a way to give us a better understanding of the phenomena of prices. Hence the history of credit, the various legal distinctions, and a detailed examination of its many forms do not seem to be relevant to this inquiry. These have been thoroughly studied by Knies in his monumental work on *Credit*.

The functions performed by credit should issue clearly from the above discussion:

(1) Growing out of the evolutionary processes of industry, with the object to increase the product of the community, the control of other's capital, in order to discount the future, was a natural desire. Credit, therefore, was not an increase of capital, but a means by which capital could be given mobility, and hence greater efficiency; it acted like the horses of the cavalrymen: they gave the men no increase in actual numbers, but they allowed an increased activity and mobility which was equivalent to a greater force of men. Credit does not increase capital in any material sense. If, as McLeod says, legal rights of action (originating in a transfer of goods) are credit, and if these rights can be bought and sold, there is an increase of exchangeable things, or wealth. But, even then, it is as plain as a pikestaff that the actual means of satisfying men's wants have not been increased by merely dickering in the titles to such goods—any more than by increasing the number of names given to a man you increase his muscles, brain, or stature. By credit, capital itself is not increased, any more than a man's muscular power is increased when he is using a crowbar, although he is, by such a device, making a more efficient use of the muscle which he already possessed.

(2) The quality of enabling capital to become more efficient, which is possessed by credit (like the crowbar for the workman), is the thing which has led some to say that credit actually increases a country's capital. Clearly enough, transferring goods is not a creation of goods; and credit is a far different thing from production. But the increase in the efficiency of any agency of production bears fruit in a direct increase of product. In every community there is some floating capital awaiting the proper investment; new capital is constantly coming forward; some capital is turning from one branch of industry to another, from one district, or state, to another; some persons are retiring from business; others are minors, or women, incapable of directing the management of their capital—from such sources as these the supply of loanable funds coming forward to join the vast amount already engaged in industry creates a reservoir of capital which by credit institutions, or by private persons, is readily passed into the hands of those who find pressing use for additional means, either because of superior management, or of special demand for certain goods. Automatically, credit allows capital to go into those industries which are most prosperous, and withdraws it from those which can make less fit use of it.<sup>11</sup> Thus indirectly credit increases product by aiding in the facility of employing capital, a prime agent of production.

(3) By coining property into means of payment, as already described, credit increases enormously the flexibility and transferability of all kinds of saleable goods

<sup>11</sup>This was fully explained by ВАГЕНОТ, *Lombard Street*, pp. 13 ff.

for industrial use. It changes control over future goods, or goods in a fixed form or place, into a control over present, or usable, goods. In this fashion credit performs the function, on a large and imposing scale, of a medium of exchange.<sup>12</sup>

(4) When a person is enabled, by aid of credit institutions, to coin an enlarged quantity of goods into means of present payment, his power of purchase (supposedly) in cash at any one moment is limited only by his cash and the amount of saleable and bankable goods he possesses. To be sure, these grants of credit carry invariably the necessity of repayment, and the means of repayment (as well as the obtaining of credit) depend on there being enough saleable goods forthcoming at maturity to meet the obligations. If goods are saleable, the change into forms of money is an easy and secondary matter. On the other hand, miscalculations, accidents, and unforeseen events may prevent repayment by stopping the outcome of goods, or by lowering their value through some check upon demand. The possibility of buying, however, on an enlarged scale by the use of credit, no matter what its perils, exists. It is a means of throwing a vast purchasing power into any one direction; and, as we shall soon see, it is capable of abnormal extension in general. The immediate effect of elation, hopefulness, and prosperity is certain to cause an extension of unsupported or false credit, and to aid in the irregular and extreme movements of market (not normal) prices. Hence the cycles of rising and falling prices are exaggerated by this possible use of credit.<sup>13</sup>

4. The various kinds and forms of credit arise from a transfer of goods, which all credit has in common, but they differ in many ways according to the agreement of the parties, the business habits and traditions of the community, and especially for reasons arising from different legal methods of enforcing repayment. In fact, the forms of credit transactions and their classification belong more to a legal<sup>14</sup> than to a monetary study, in which one may easily be led away from the fundamental questions involved.

The kinds of credit obligations differ from each other mainly as regards the methods of securing repayment. It is in such ways that the business public has gradually worked out processes of loan obligations which allow the lender to eliminate almost entirely the question of personal confidence in the borrower. Instead of a simple promissory note given by the borrower (and indorsed by a fellow-merchant), a note secured by the deposit of sufficient collateral (made up of saleable securities) is a method by which an estimate of the personal honesty or probity of the borrower is unnecessary. In such an operation the main task is to keep informed as to the prices of the collateral, and to see that the margin is always sufficient to cover the loan.

Notes discounted on occasion of an actual sale of wheat, wool, cotton, and the

<sup>12</sup>McLeod is quite right in saying that "the true function of credit is to bring into commerce the present values of Future Goods" (*op. cit.*, I, p. 88; *cf.* also p. 571).

<sup>13</sup>This conclusion may be considered in connection with A. Wagner's point (*op. cit.*, pp. 394-7) that credit

tends to steady prices by allowing capital to flow from industries in which business is slack and prices low into those in which demand is brisk and prices high.

<sup>14</sup>McLeod's study, as before remarked, has gone to great extremes in this direction, much to its loss of usefulness for the study of monetary problems.



like, evidenced by certificates or bills of lading, afford a basis of normal and legitimate credit. Just to the extent that discounted notes are based only on personal judgment or favoritism, without a basis of goods, they are speculative and abnormal. Such business is, no doubt, carried on, but it is uncertain and questionable. Of course, in case of a borrower of means and high credit, a loan may be made not ostensibly based on goods, if no collateral is exacted; but, in reality, it will always be found that the lender believed that the borrower had property which, in the event of disaster, could be taken by due course of law as an equivalent for the loan. That is, "high credit" is only a way of describing the chance of falling back on some kind of wealth which lies in the possession of the borrower; this property is security, but it is not at once as easily realized upon as collateral. To protest a note, get judgment of a court, and execute by levying on the debtor's estate is a longer and more uncertain process than assuming possession of collateral already deposited; but, in either case, the difference is only one due to greater care as to repayment. Goods lie behind each form of credit, although they differ in the legal formalities to secure repayment.

Promissory notes of institutions are evidences of a transfer of goods. When a bank makes a loan and issues its own notes to the borrower, it receives an obligation, giving the right (properly secured by collateral, or otherwise) to receive a sum in the future, which becomes a valuable item in its resources; while the borrower gets the right to draw on demand in the form of the bank's own notes. Bank notes, based on the security of such commercial assets, are elastic, as well as a safe form of credit operations; because saleable goods, in the process of getting from producer to consumer, are the final recourse even behind all securities (since collateral is, after all, only a title to saleable property or goods).

Promissory demand notes of governments have an entirely different character. They are usually the issues of a borrower, and not of a lender; they are evidences of debt not generally based on any goods having a marketable character; and for the goods received at the time when the notes were issued no equivalent property is held as resources. Ordinarily, such property is obtained solely in order to be entirely consumed. The security for repayment is not of a kind on which any sums can be collected by the creditor, since the government cannot be proceeded against through the courts. Consequently, the repayment being dependent on the uncertainties of partisan politics, both the intention and the ability of the issuer to pay are clouded with doubt. The demand notes of a state may thus be changed into promises whose fulfilment has been removed into the indefinite future.

A borrower, or depositor at a bank, has a demand liability, which is the same in kind as, although different in form from, bank notes. The borrower, when granted a loan, is given the right to draw on demand; that is, he first becomes a depositor. This right to draw actual money is, in ordinary large transactions and in normal times, seldom exercised; because the cash may be lost or stolen, and because the right to draw is itself good means of payment, and is a convenient way of canceling indebted-



edness by a transfer of rights to draw in the form of checks, or drafts. The deposit account is, in the main, the evidence of transactions in goods, and checks are the forms by which claims on the deposits can be passed to others. For instance, the sale of cattle may be behind a \$10,000 deposit; then by checks \$5,000 may be transferred to others for lumber, and \$5,000 for dry-goods. In essence, the credit transaction was the coinage of cattle into means of payment (represented in terms of the standard by \$10,000) in a deposit account; then the value of the cattle was bartered for lumber and dry-goods. The exercise of credit is measured better by bank deposits than by bank notes among large institutions in city communities, even better than by the mass of checks and clearing-house totals (although the latter are approximately correct). As the whole of the deposit account may not be drawn upon, the bank deposits show more accurately the extent of the credit operation than the checks actually drawn.

Continental countries in Europe, by habit, employ the deposit and check system less than the Anglo-Saxons, but instead they make extended use of the bill of exchange. The seller draws on the buyer, and uses the bill as a means of payment to his creditor, one bill often liquidating a score of transactions. The goods which by a transfer originated the first use of the bill are thus used to offset the payment for other goods of equivalent values many times in succession. And, even when created by banks, bills are based on the transfer of the commodity, gold. The bill, when drawn for a date in the future, is thus only one form of accomplishing a credit operation. When finally presented, after its round, it is a charge against the drawee's account; but on its way it has offset many payments.

Simpler methods, without resorting to the use of a credit institution, are adopted when a buyer obtains goods on account, the book entry being the evidence of a transfer of goods, carrying with it an understanding that the buyer will pay an equivalent at some date in the future. Such entries may not be followed by the drawing of bills of exchange, or the signing of promissory notes, which could be discounted by the seller. Such forms of credit, therefore, while very numerous, are not of a kind to be passed from hand to hand, and their activity in exchanging other goods is *nil*. The security for repayment is in the loosest legal form; hence, it is one in which great risk resides. In this respect it is more troublesome (in case of commercial failure) than promissory notes.

While the above description gives the general characteristics of the commonest forms of credit,<sup>15</sup> it must be recalled that they vary in many details of law and custom, which lie outside of our present study. It may be well to add the distinction<sup>16</sup> between a credit operation in which (1) the property transferred to the borrower must be returned in the identical form loaned (*e. g.*, a horse), and (2) one which gives abso-

<sup>15</sup> PHILIPPOVICH (*op. cit.*, pp. 197, 198) distinguishes between the following kinds of credit transactions: (1) In respect of the *person* of the debtor, credit may be public or private. (2) In respect of the *duration* of the transaction, credit may be: (a) short or long credit; (b) terminable credit, and that whose limit is not expressly stated;

and (c) credit terminable on demand. (3) In respect to the kind of *security*, credit may be real or personal. (4) In respect to the *use* made of the goods, credit may be production or consumption credit.

<sup>16</sup> Cf. McLEOD, *op. cit.*, I, p. 147.

lute control over the thing loaned, permitting its entire destruction, and demanding only a return in kind (*e. g.*, a return of red wheat No. 2). Ordinarily, the courts enforce the return of an equivalent value.

Not infrequently<sup>17</sup> credit is classified as real or personal; with some mixed cases. In real credit the chance of repayment is founded on some thing given as security, having durability, value, or ease of conversion into money; while in personal credit faith is reposed in the word of the debtor. The mixed cases cover some instances of ordinary discount, which are based partly on the personal character of the borrower and partly on the legal claim against property given by his note. As explained above, in my judgment personal credit is not a legitimate business transaction;<sup>18</sup> only that which insures repayment of goods, by a more or less strictly drawn security, is to be regarded as legitimate. In the future, doubtless, personal credit will properly become a smaller and smaller part of the business of solid and large institutions.

5. Such being the nature, basis, functions, and forms of credit, as already developed, it is for us to consider next the important classification of credit transactions, in regard to their effects and use, into normal<sup>19</sup> and abnormal credit. Normal credit is the coinage of goods, or property, into present means of payment (in terms of the standard, *e. g.*, dollars of gold) in amount no greater than the value of the marketable goods, or property, owned by the borrower. That is, a person can get normal credit only by showing that he has the marketable wealth, or a reasonable certainty of wealth in the future, which will fully secure the lender for the loan. By transferring to the lender the claim to his cattle or grain sold, the borrower gets in return present means of payment in the form of a deposit account at a bank; and so long as the claims held by the bank are based upon actual and saleable property, the transaction is sound and normal. At time of maturity the note is paid, and the funds of the institution are freed for other operations of the same kind. The means of payment granted to the borrower are used by him to pay for other goods, or services in production. In short, the process, at the bottom, is an exchange of goods against goods, facilitated by the exceedingly efficient use of forms of credit and credit institutions. Without the aid of credit, each person (or firm) must go on producing with only the present goods which he owned, while much of his property would remain to him inert, and incapable of being used as purchasing power. Under the modern division of labor each producer

<sup>17</sup> Cf. P. LEROY-BEAULIEU, *op. cit.*, III, pp. 356, 357.

<sup>18</sup> When discussing the justification of a loan in the productiveness of the industry for which it is used, HADLEY (*Economics*, p. 143) raises this point when he says the creditor should "look to the investment rather than to the borrower for his security."

<sup>19</sup> Several years after using this classification in my lectures, I found this admirable statement of P. LEROY-BEAULIEU (*op. cit.*, III, p. 358): "Credit ought not to be a simple anticipatory claim on wealth still in the future and uncertain; it should be based upon a real and actual thing — wares produced and not yet sold, wares sold and not yet

paid for, even wares still in course of production, if all the materials have been obtained, an enterprise not yet finished, but which has already been carried to a certain point of advancement. . . . Such is normal credit; its function is not that of commencing enterprises, but of intervening at a certain stage of their development to facilitate completion, and especially renewal."

McLeod hints not remotely at normal credit in saying: "Credit always has to be redeemed; and if this can be done, the Credit has been sound. Hence Credit is never excessive, whatever its absolute amount may be, as long as it always returns into itself" (*op. cit.*, I, p. 318).

needs the results of others for present operations until his goods are finished. If all credit were abolished, it would affect all operations now requiring some aid in present goods for which future repayment would be possible.

Normal credit thus enlarges the purchasing power of a man to the extent of all his bankable property; or, in other words, it sets into the circulatory movement of exchange of goods against goods more forms of property than could otherwise be set in motion. Suppose, by way of illustration, A today sold \$10,000 of cattle on sixty days' time, and has also in hand \$2,000 in cash; what is his present purchasing power? Evidently, by discounting his bill or note, it is in all (less the discount) \$12,000. If he could not have had credit, it would have been only \$2,000. The same would be true of B, who had sold flour; of C, who had sold steel; and so on through the whole industrial community. If no credit were possible, in each case the purchasing power would have been limited to the cash in hand; on the other hand, by a general resort to credit, each and all would have purchasing power to the extent of their bankable property.

The question of importance now raised is: What is the effect of this enlarged purchasing power on prices? Or, what is the influence of normal credit on prices? A's cattle have been coined into means of payment expressed in dollars; and, if it is directed to the purchase of B's flour (which has also provided means of payment to B, expressed in terms of the standard money), there is a demand for B's flour exactly counterbalancing the demand of B for A's cattle (supposing B to have that demand). Enlarge the operations to include C, D, and all others; then the transactions will balance all around; and the phenomena become simply an exchange against each other, of a greater number than before of goods at relative values dependent on the reciprocal demand and supply for each commodity. A general increase of purchasing power, arising from normal credit, acts upon prices in no other way than would an increased production of all goods. It is the case where general supply is identical with general demand;<sup>20</sup> an increase of supply is, *ipso facto*, an increase of demand. If an increased amount of goods come forward to be exchanged, we may have the phenomena of changes in relative values, and so in relative prices (accordingly as some goods are unequally affected by relative demand as compared with others); but it does not at all follow thereby that there will be any change in the value of the general mass of goods relatively to gold, that is, a change in the general level of prices (unless there comes

<sup>20</sup> "Let us suppose a *régime* of barter: under such circumstances Supply would consist in the commodities offered in exchange for other commodities. In what would Demand in such a case consist? We can only give the same reply: in the commodities offered in exchange for other commodities. In other words, under the simplest and most elementary form of exchange, Demand and Supply, as general phenomena, as aggregates, could not be discriminated. Each commodity would be in turn Supply and Demand—Supply in reference to the person seeking to obtain it, Demand in reference to the person who used it as the means of obtaining som. thing else" (p. 24).

"A certain number of people, A, B, C, D, E, F, etc., are engaged in industrial occupations—A produces for B, C, D, E, F; B for A, C, D, E, F; C for A, B, D, E, F, and so on. . . . The producers are also consumers; and if, on the whole, less is produced, there would, on the whole, be fewer commodities to be exchanged. But why should this affect the proportions in which they are exchanged? or why should it affect the relations between commodities in general and money?" (p. 32).—CAIRNES, *Leading Principles of Political Economy*, chap. ii.



in with the supposed increase some improvement in the arts which would lower the price of each unit of product). And the same would be true, also, of an increased activity of exchanges brought about by normal credit. Let  $m$  represent all the goods capable of being exchanged only by means of money, and let  $x$  represent goods exchangeable by credit. Then the total mass of  $m + x$  would be exchanged against each other with practically the same results, so far as general prices go, as  $m$  alone would have been. The end would be the same. Credit has been the evolution of a refined system of barter, enabling goods to be exchanged against goods. When looked at generally, all bankable goods form the supply, and at the same time the demand. In the last thirty years, in fact, we have seen an enormous enlargement of the output of goods, and with it has come a corresponding expansion of bank deposits, but yet the prices of each unit (ton, bushel, etc.) of goods are, in general, less today than at the beginning of this period.

But, looking at each transaction separately, a temporary aberration in market prices may be seen. The appearance of the new demand is not simultaneous in all industries; in those in which it appears first there is a new purchasing power relatively to goods in other industries. If, for example, A's \$12,000 is all offered for B's flour, a rise in the market price of flour may result, without in any way changing the normal expenses of production of flour; later, competition among millers may appear, and the market price will fall. Likewise, if C disclosed a new demand for A's cattle, the market price of cattle, as well as that of flour, may rise; but cattle would, in time, be affected by competition, and the price of each animal of the larger total in existence would tend to fall toward the normal price. Thus by credit operations—which have the same general effect as an increased product—there may be perturbations of temporary, or market, prices; but normal prices will be resumed, if any competition exists, under the working of demand and supply. It must be admitted, theoretically, that, as normal credit may produce temporary fluctuations of prices, it may produce possible changes in the value of the standard; but these changes will be so slight, running over so short a time, and so numerous, that they will largely offset each other and produce no appreciable results on the level of prices.

But the increase of purchasing power caused by normal credit leads many to believe it would raise general prices, just as an increase of money is supposed to increase prices. In this instance, some confusion may be avoided by pointing out that, although the titles to the property exchanged by means of credit are expressed in dollars, the credit operation is not—and, in the nature of things, cannot be—the same as an offer of actual cash. Many wrongly suppose that the additional purchasing power created by credit (and expressed in terms of money) is an actual offer of money. A purchase of flour by a check for \$12,000 seems, on its face, to be paying with a claim on \$12,000 of cash, to be got on demand at some bank. But a bank with \$40,000,000 of demand liabilities, and having the highest standing, may not have more than \$10,000,000 of cash in its vaults. That is, if everyone having a credit obligation

on demand were to ask for specie, instead of going on normally to get from goods to goods desired as economic satisfactions, no one could succeed; and there would result a stoppage of credit transactions and suspension. As before remarked, there never could, or should, be kept on hand an amount of the common denominator equal to the sum of all credit transactions at any one time; nor, if understood, is there any such intention in the minds of the business community.<sup>21</sup> Credit transactions are, in fact, except to a very limited amount, not liquidated by actual money. Hence, it does not follow that normal credit, by acting as an offer of an equivalent amount of standard money, changes the value of the standard (and thus changes prices) by an alteration in the demand of the community for gold. Some additional demand may arise with increased liabilities for increasing reserves; but of that later.

It may be said, however, by men of affairs: "If A is not granted discounts on the wheat which he is buying in Kansas, he must stop buying and shipping wheat; and, consequently, the price of wheat will decline." This is intended to show that credit directly affects prices, as much as the offer of actual money. This case, however, is one of a change in special demand and supply; it means only that, if discounts on a single article like wheat are refused, less property of other kinds (expressed in terms of money) is being (through banks) offered for wheat; it means only that wheat is changing in price relatively to other goods (not that prices in general are falling). Such a change in the price of a special article could be brought about by a readjustment of demand, even if credit or money did not form any part of the means by which demand expresses itself.

Normal credit cannot raise general prices. Goods, exchanging against each other with the tags of prices attached to them, do not act differently from those without such tags. In the case of the appearance of new goods, furnishing a new demand for other goods (all being expressed in terms of money), it may appear at first as if the other goods must rise in price under increasing demand. That depends on the adjustability of supply. Price is as much influenced through the supply as through the demand. In a case of particular supply and demand, such as this, a new and legitimate demand will increase the prices of other goods, and keep them on a higher level, only under the supposition that the increased supply is not immediately forthcoming.<sup>22</sup> But in many manufacturing industries the facilities for increasing the supply, as soon as a possible demand is perceived, are such as to bring about an

<sup>21</sup> McLEOD (*op. cit.*, I, p. 316) says: "Because a Bill, or Note, is an obligation to pay money, many uninformed writers suppose that they must always be paid in money or Bank Notes;" and he goes on to show that credit bears no fixed relation to the money in a country. To repeat, the real end and purpose of production and exchange is not to get the common denominator, but to secure those goods which give us economic satisfaction. Hence only that amount of the standard is kept on hand (that is, only that part of a country's wealth is invested in the machinery of exchange and money) which will meet the special demand for the actual standard from time to time. How much

this will be will depend on experience, settled conditions, intelligence of business-men, character of the community, and the conditions of trade. If there is no fright or panic, little will be needed. The demand for actual money in a crisis is a special case for later discussion.

<sup>22</sup> This was perceived as long ago as Arthur Young:

"I admit that, to an unknown degree, an increase of wealth, increasing the demand for certain manufactures, will increase the quantity brought to market, and prices stand as they were. For instance, send a gradual increase of orders to the manufacturers of *Manchester, Norwich, Birmingham*, etc., and they will answer the increased



instant response: more men are engaged, more material is worked up, and needed adjustments of space and new machinery are made in an incredibly short time. In fact, potential supply is sufficient in many cases to keep down the price, even under an increasing demand. More than this, under a demand for an increased supply, it is quite likely that the expenses for producing each unit of goods may be lowered. That is, an increased demand, attributable to normal credit, would not in many instances cause a rise of prices in other goods. In short, such an effect of normal credit, shown in higher prices, could be maintained only, in the special industries in which the supply is controlled, by some sort of monopoly conditions. Possibly the price of steel rails, to illustrate, might for a few years be kept above normal prices, because competition on a considerable scale, and a sufficiently large capacity in the mills to meet an exceptionally well-sustained demand, might not be in existence. The general proposition, then, remains clear: in some industries, a demand arising only from the presence of an increased quantity of exchangeable goods will not raise general prices; in some it may raise prices for a time, until supply can overtake demand; but it cannot spread to all industries, nor cause a general rise of all prices.

The pith of the answer to an inquiry as to the effect of normal credit on prices is to be found in a reference to the effect of credit on normal expenses of production. Does credit change any of the elements entering into the normal expenses of production of any article? If it does not, how can it be said to have any distinct effect on general prices? Goods already produced cannot be influenced as to their expenses of production by new means of exchanging them; if it affects price at all in that way, it would be by reducing price through greater efficiency of exchange. If it does not affect the commodity side of the price ratio, does it touch the money side? Are normal prices of goods affected by credit through operations which raise, or lower, the value of gold? It can affect the value of gold only by touching the demand for it; but in so far as normal credit can be said to change the demand for gold, it works to lessen the demand by furnishing another means of exchanging goods without having resort to the article chosen as the common denominator, or standard.

Theoretically, the gradual introduction of credit as a medium of exchange, until its amount has become very large, has enabled a work of exchange to be done which otherwise must have fallen upon some other form of money. It is not uncommon to reason that if this work were to fall, for instance, on gold, it would enormously increase the demand for gold, and so raise its value; *e converso*, it is argued, the existence of credit has taken away a large demand from gold, lowered its value, and, as a consequence, raised the general price level. This reasoning is sound in the main, but not altogether appropriate; no contention can be based on a contrast between the presence and absence of credit. It is as much a part of the gradual evolution of modern industry as division of labor; without either, existing operations would be

demand for perhaps a long time, without an increase of prices; because the people will increase with their indus-

try, and a want of hands will not be felt."—ARTHUR YOUNG, *Political Arithmetic* (1774), pp. 118, 119.

impossible. Today the demand for gold is a fact based upon the existing customs and methods of society; and one of them has long been the use of credit. To reason on what would happen if it were absent would be like reasoning on a change in human nature, or on a supposition that the race has gone back in its industrial development to a point where primitive conditions only could prevail. This going back to an impossible point gives us no  $\pi\omicron\upsilon\sigma\tau\omega$  on which to reason.

To see all that there is in the question raised, we need only admit at once that anything which lessens the demand for the standard, or gold, will *pro tanto* lower its value, and thus indirectly raise prices; since a lowering of the value of the standard is equivalent to a rise in the goods side of the price ratio, or a rise of prices in general. If the gradual introduction of credit, therefore, has lowered the value of gold, it has affected prices only through a change in the value of the standard in its relation to goods, and not through an increase in the quantity of the media of exchange relatively to the money work to be done. At the best, it could be said that credit, by its enlarged use, has saved gold from being more and more needed as a medium to be passed from hand to hand in the actual exchange of goods; but there is no reason to suppose that human intelligence would not have devised something else to serve its purpose if it had not utilized credit.

Supposing that normal credit has saved gold from bearing a burden of demand which would otherwise have fallen upon it, the more correct way of stating the outcome would be thus: it has obviated a rise in the value of gold which would otherwise have resulted from the expansion of modern exchanges. But even this statement may, by itself, give a wrong impression. Gold has been generally adopted as a standard because its supply has become so great that changes in monetary demand or supply produce very slight effects upon its world-value in any short period of years. The great production of gold has outstripped the demand, or at least kept pace with the newly created demands arising from its adoption as a standard in countries formerly using silver; and the contemporary growth of credit has had the effect of making this supply go farther than otherwise it would. What would have happened without it, it would be absurd to speculate. Men being what they are, they will always scheme and devise methods of saving the use, as an actual medium of exchange, of a valuable standard which must run risks of loss when passed from hand to hand.

In a very practical sense, then, in the periods within which the enormous supply of gold prevents perceptible changes in the world-value of gold arising from changes in demand, it may be accepted that normal credit does not, in its fullest exercise, directly increase the normal prices of goods nor raise the general price level. It can do this only through affecting the world-value of gold, and thus reaching prices; but, on the other hand, there is no logical and substantial reason for supposing that normal credit has an influence on general prices through increasing the demand for goods by a so-called increase in purchasing power, or by the increase of the medium of exchange; since, in normal credit, be it remembered, a general increase of demand *ipso tanto*

carries with it an increase of general supply. In brief, although fluctuations in market price may be produced by irregular appearances of normal credit in some (and not all) industries, normal credit can have no general effect on values and prices, after a time long enough to permit temporary fluctuations of price to spend their force.

6. The effects of credit on prices are not confined to the workings of normal credit. Different results follow from abnormal credit, which may be defined as the coinage of goods, or property, into present means of payment (expressed in dollars or other units) in an amount *greater* than the value of the marketable goods, or property, actually owned by the borrower, either unknowingly or knowingly. At once it will be asked how an operation not based on evident requirements can ever take place. This question becomes still more importunate when it is recalled that the lender, who coins property into present means of payment, does so at his own risk, knowing full well, if he is mistaken as to the value of the collateral, or as to the saleability of the goods behind the paper, that he himself must meet the loss. If such be the facts, how does it happen that banks, or any lenders, could ever be led to create abnormal credit? Of course, the answer is that it never could exist, if the whole truth as to the present and future value of goods were always known, or if all men were perfectly reliable. Indeed, abnormal credit may arise either unintentionally or intentionally. In the first place, with the best of purposes, sanguine human nature may often see the possibility of wealth so vividly as to act as if it really existed; a man may believe that his purchasing power is greater than it actually is, and he may be able to convince a lender that he is right. More than this, the wisest of men may be mistaken in making business judgments; they may meet with unexpected reverses and accidents; or by changes in demand over which they had no control goods which once had a good market may become unsaleable. On the other hand, by conscious deception, paper which was supposed to be supported by satisfactory goods may become worthless by fraud. Thus knowingly or unknowingly—more often the latter—credit may have been granted which, in fact, was not based on saleable goods worth enough to meet the loan at maturity. Abnormal credit, then, is built upon error, delusion, or fraud; and sooner or later its falsity is sure to be discovered. Abnormal credit is speculative; and illegitimate speculation *e converso* may be defined as the use of abnormal credit.

What is the effect of abnormal credit on prices? How does it differ, as regards its influence on prices, from normal credit? On the face of things, abnormal is not distinguishable from normal credit; the loan has been granted on the supposition that good and sufficient property is behind it, even though there may be—either on the part of the borrower or lender—a deception somewhere. The business may seem to be sound when in fact it is rotten; or an unperceived shift of demand may be going on which will wipe out the value of the goods intended to meet the loan at maturity. More often, the optimistic temperament of men, or the spirit of adventure, may lead them to go beyond their means and over-trade. Men who have received loans may not make such



use of what they receive that they are able to repay when forced to take up their paper. This is a commonplace of business experience, which is constantly going on; in fact, credit men and banks are daily trying to distinguish between normal and abnormal credit, the one being sound, the other unsound; and yet externally they act alike.

The offer of credit, moreover, of any kind—whether normal or abnormal—appears in terms of money, and on its face is, in either form, purchasing power. In both cases, the machinery set in motion is the same, and the immediate effect of any special demand upon prices is the same; the difference will appear in the final effects upon the general level of prices. Normal credit extends a person's possible purchasing power to the full amount of his bankable goods; but abnormal credit goes farther than this: it gives the borrower a purchasing power often—when the delusion is widespread—enormously beyond the borrower's actual means. In the former case, changes in special demand offset each other, or are met by corresponding supplies, and do not affect perceptibly the prices in many industries except for short periods; in the latter case, what appears at first as only special demand is, by virtue of its general character, capable of extension over all goods, and ends by modifying the general level of prices. It is not because credit is "excessive" that it produces any danger; it depends upon the kind of credit, be it great or small, whether or not it is full of peril. Normal credit may increase indefinitely; but it can never increase dangerously. Abnormal credit, on the contrary, is perilous in any quantity, exactly because it is of a wholly different kind.

If abnormal credit gives—as it must—purchasing power, expressed nominally in terms of gold, it has the initial effect of all demand when directed toward special goods, and raises prices. This would be true whether the evidence of the credit transaction emerged in the form of a book entry, or in any other way. The price of other goods tends to rise under the new demand; the particular supply of other goods at once responds in many industries, certainly in those in which no monopoly conditions exist. Even though the new demand in this case is false, the supply comes forward as if, eventually, the goods behind the false demand, or their equivalent, could be had in payment. The supply is contracted for out of all proportion to a true demand; until the true state of affairs is disclosed, the real maladjustment of supply to demand is unperceived. When the actual goods (or their value) which are supposed to create the demand are exacted in any case, and the falsity of the situation is uncovered, then supply is found to be far in excess of the demand. When the delusion is pricked by any untoward event, the supposed demand collapses; and the prices at which the supply is held fall suddenly and heavily.

The peculiarity in the operations of abnormal credit is that this over-trading can go on in all industries, with the spread of a generally sanguine attitude; the false demand appears everywhere; or, in other words, the potentially false demand is everywhere present. The fictitious purchasing power, as already said, seems to be an offer of money. In reality, it is not an offer of money; indeed, it is not even an offer of sale-



able goods. Yet so long as the bubble was not pricked, all seemed fair on the outside. Prices went up all round. It was not merely a change in relative values due to a readjustment of special demand, as in the case of normal credit; it was a general, although speculative, rise of almost all prices.

From the point of view of general demand and general supply, the enlarged demand due to abnormal credit combines both the real and a false demand; and general supply is increased to meet the combined demand. Normally, general supply of goods ought to be identical with the general demand, taken as a whole; and while the delusion lasts this appears to be true. The goods offered serve as a total demand at prices offered for the supply; and the goods forming the supply serve as a total supply at the prices exacted. Then comes the pricking of the bubble. The false demand disappears. The value of the general supply is now vastly greater than the value of the shrunken general demand; and the high general level of prices, kept up by a false demand, now unsupported, falls. The outcome is that in many industries a vast mass of goods exists in supply out of all proportion to a legitimate demand based upon saleable goods. Then liquidation is forced at great sacrifices. Obligations have been entered into for sums of money based upon the high level of prices; while goods, by which liquidation must always be ultimately effected, have fallen in price, and the proceeds from their sale do not cover the amount of the obligations. As contrasted with normal credit, abnormal credit can cause practically a general rise in the level of prices, or at least a rise in the average of prices, and this high level can be maintained so long as general over-trading can go on without being discovered; after the discovery comes, the fall of prices can go even below the normal level, because of the wild rush to sell goods for liquidation. That is, in the false adjustment of demand and supply of goods, a general rise or fall of prices has resulted from influences affecting goods in general, but which have not originated with the standard in which all prices are expressed.

It should be observed that what was once normal credit may, by force of events out of the control of borrower or lender, gradually or even suddenly be changed into abnormal credit. At the time of granting credit, the security exacted for repayment may be ample; but, before the loan matures, it is conceivable that the value of the securities, by changes in the industrial situation, may shrink so much as to leave the lender little or no protection. For instance, securities are valued largely according to the certainty and amount of dividends, or interest, paid on them; and a commercial reverse would cut off earnings, lower dividends, cause a serious fall in the capitalized value of the securities, and leave the loans for which they had been a protection uncovered. That is, a normal credit becomes by such events partly abnormal credit. In such cases, it might possibly be supposed that the disturbance and loss would fall upon the lender, or bank, that had already granted the normal credit; that in this way the demand originally created would be unaffected; and that the influence on keeping up prices would remain in force. Far from it. The lender has various means of trans-

ferring the responsibility to the borrower: in cases of demand loans, they can be called in at once, if the collateral proves insufficient; if the loan is a time loan supported by securities, additional protection can be called upon, if shrinkage occurs. In such ways, the borrower in general will be obliged to carry the burden of his own creation; he must meet the difficulty by turning other goods, or property, into means of payment, or else stop payment altogether. This will limit his demand, and force him to contract his offers of purchasing power. Had a bank been taking paper without much intelligent discrimination, and, when it tried to force responsibility home on its borrowers, happened to find them quite generally unable to respond to its demands, then the bank itself would be obliged to suspend; it would be punished for its bad judgment; but the fictitious purchasing power which it had fostered would be eliminated, and, the false demand being withdrawn, prices in general would fall.

Although the general rise of market prices caused by abnormal credit is speculative and based on a delusion, yet it is a fact; and the rise of price, continuing so long as the over-trading exists, does for a time produce a new valuation of goods relatively to the money standard. The rise of prices is only a statement of the fall in the value of the common denominator (or gold); but it is plain that we have here a change in the price-relation between goods and gold due not at all to operations directly affecting the demand or supply of gold, that is, not affecting the gold side of the price ratio.<sup>23</sup> It is a general change of prices not attributable to the abundance or scarcity of the money material (*e. g.*, gold) used as a standard. And, if a remedy were to be sought to prevent such movements of price, it would be absurd to begin with the money side of the ratio. Changes of price arising from illegitimate speculation must, of course, be dealt with wholly by influences regulating, or restrictive of, abnormal credit and over-trading. This, however, is a study of human nature working in the world of trade and commerce under great tension, which is not within our present purpose.

Whenever, under normal credit, there occurs a mistaken adjustment of production to effective demand, as when goods are not wanted in the proportions produced, the outcome will be much the same as under abnormal credit. The demand is based on a delusion, or is non-existent; so that an offer of purchasing power based on goods not in demand becomes powerless. If, on the surface, goods seem to be behind the transaction, it is found out later that the reality was not as the seeming; since the goods did not have the saleability supposed. Hence the collapse of the purchasing power, and the consequent drop in prices of the goods toward which the demand had been directed.

7. The operations of abnormal credit<sup>24</sup> provide the materials for a commercial crisis. If many traders become optimistic, and all are over-trading, prices and securi-

<sup>23</sup> McLeod's statements about gold and credit do not seem true; "This Credit produces exactly the same effects: and affects Prices exactly as so much Gold. Prices are estimated by the aggregate of Money and Credit" (I, p. 335). "All Credits payable in Gold — whether Bank Notes, Banking Credits, Bills of Exchange, or any others — have identically the same effects on the Value of Gold and

on Prices as an equal quantity of gold itself" (II, p. 733).

<sup>24</sup> When McLEOD (*op. cit.*, I, p. 335) says, "It is through the excessive creation of this species of Property that all Commercial Crises are brought about; and through the mismanagement of these, and bad Banking legislation, that Commercial Crises develop into Monetary Panics," he seems to exactly describe abnormal credit.

ties rise, until, at the psychological hour, the circuit is broken at its weakest link. Some event, of relatively small importance, brings down one person or institution; and, when liquidation is attempted, it is found that promises have been made quite beyond the amount of resources, that credit obligations existed greater than the goods actually owned—that is, that the liabilities far exceed the resources. Then others find that paper due them is not collectible, that is, is not based on saleable property to a sufficient amount; more persons fail, and finally a general collapse comes. In proportion to the extent of the over-trading is the crisis more severe and ruinous. The effect is exaggerated by a rush to convert all forms of goods and property into the actual legal standard, because maturing obligations must be met (supposedly) by actual cash.<sup>25</sup> Of course, as said before, all goods cannot be converted into cash at the same time (any more, to use an old illustration, than all the people of a country could ride on the railways at the same hour); but the panic-stricken dealer throws over goods and securities, and forces prices down to an extreme point by selling when no one is anxious to buy. It is in such circumstances as these, we shall find, that means of payment are created, based again on goods such as clearing-house certificates; or, as in England, by obtaining new reserves of notes based on consols by a suspension of the Bank Act. In short, a panic demonstrates that credit transactions are really based on goods; that liquidation never can be forced in money; and that the invariable remedy is some method of tiding over the emergency by creating means of payment based on goods (not specie) which will be acceptable by lenders from borrowers<sup>26</sup> (*e. g.*, clearing-house certificates).

The fall of prices due to a commercial crisis, and the so-called subtraction of credit, is, then, due to a return from abnormal to normal credit; it is not an annihilation of credit, but a forsaking of credit not resting upon actual saleable goods.

8. The full discussion of the theory of prices is, of course, necessary to a final conclusion as to the effect of credit on prices; but the present analysis of credit operations allows the influence of credit, to some extent at least, to be seen by itself.

The problem may be clearly presented by the accompanying diagram. Sections (1) and (2) together represent all the wealth of the community; while (3) arises from

(1)	(2)	(3)
General Wealth in Goods	Gold and Silver	Forms of Credit

dealings in, or exchanges of, articles in (1) and (2). Section (3) is no part of the total wealth of the public;<sup>27</sup> it is only a set of devices created in the later evolution of industrial customs by which (1)

and (2) can be efficiently set in motion and exchanged.

<sup>25</sup> On this point, however, see note 9, p. 11.

<sup>26</sup> In speaking of the after-effects of a panic, NICHOLSON (*op. cit.*, p. 73) describes what is really the return to normal credit: "As soon, however, as the contraction of credit sets in, the bankers make wry faces over credit-documents not of the first class, and there is a sudden

diminution in the representative money and a great fall of prices." The fall of prices, however, is certainly not in this case due to a reduction in the quantity of the media of exchange other than abnormal credit.

<sup>27</sup> This, of course, is at variance with McLeod, who makes rights to receive wealth a part of wealth. This is



It is evident that (2) plus a part of (1) together form the total possible purchasing power of the country, going and coming interchangeably. The reason that not all of (1) can be included in general purchasing power is that some goods, like fixed capital, land, and the like, may not be saleable, and therefore not bankable property. But (3) is the machinery by which a very large part of (1) is converted into general purchasing power, in addition to (2). That is, the explanation shows how credit has, in general, increased the purchasing power of the community, in the sense that a part of (1) can be used as means of payment, instead of the country being restricted only to (2). It is true that all of (3) is drawn in terms of (2), or the standard, but (3) does not increase the amount of economic satisfactions *per se*.

The difficult question as to prices is the effect of (2), or money, on prices; and, also, we must discuss the influence attributed to (3) on the prices of articles in (1); or, put in another way, what is the effect produced on the value of (1), goods, relatively to (2), or money, by the existence of (3), or credit? As yet, no discussion has been given of the general theory of prices, or the values of goods (1) relatively to money (2). The present study is concerned with the effects of (3) on the prices of (1), so far as they could be touched upon without anticipating the general theory of prices.

It has been found that modern credit is a means of coining property into means of payment, thereby enabling that property to be exchanged against other property without the intervention of money as a medium of exchange (except a part held as reserves for unexpected emergencies). While serving as a medium of exchange, credit in no way dispenses with money as a standard, or common denominator. In fact, the process of evaluation of goods in the standard metal, or price-making, must necessarily be antecedent to the credit operation, which follows the agreement on price. But the phenomenal development of credit only emphasizes the truth that the stability of the standard (in which prices are expressed) is beyond all things most essential; since all the mass of complex transactions, cross-exchanges, contracts, and credits, are drawn in terms of that standard; and a change introduced in the value of the standard (by causes affecting itself only) runs through all the engagements of the whole business world, and becomes destructive to the property relations of every citizen of the state.

It has been seen that purchasing power in the form of credit cannot affect the price ratio by any influence on gold itself, except through an alteration in the demand for gold. Instead of increasing the demand for gold, the general development of credit lessens the demand for gold; hence, instead of making gold dearer, it works in the end to make gold less valuable (or at least prevents it from becoming more valuable by doing work for it). An increasing mass of credit transactions does not carry with it anything like a proportional increase in demand for gold, unless we suppose

due to different conceptions as to the fundamentals of economics, and as to what wealth means. As a legal right does not itself yield an economic satisfaction, and since the exchange of the right is really the exchange of goods

covered by the right, a single piece of goods behind a credit transaction should not be counted twice, once in (1) and again in (2), as a part of the total wealth.



that it calls for an increased use of standard money to be employed as a medium of exchange. Such a supposition is contrary to the history of the race; it assumes that with increasing transactions the permanent business habits of the people as to exchanging goods will revert to those of primitive days. How far increasing credit transactions demand greater reserves, and thus increase the demand for gold, cannot be taken up here; but the effect of an expanding use of credit in demanding more specie reserves has had a very slight effect upon the world-value of gold and, through it, upon prices.

THE USE OF LOAN CREDIT IN MODERN  
BUSINESS



## THE USE OF LOAN CREDIT IN MODERN BUSINESS

THORSTEIN B. VEBLEN

THERE is no intention here to offer a restatement of the general theory of credit, but merely to discuss certain features of the use of credit peculiarly relevant to the conduct of modern business. The subject of inquiry is the resort to credit as an expedient in the quest of profits. The larger, and in some relations perhaps the more important, aspects of credit are accordingly not touched on here, except so far as seems indispensable to the theory of that business traffic upon which the inquiry centers. The inquiry, therefore, turns about the business motives that lead to an extensive use of credit and about certain of the general consequences which credit extension has for the course of business affairs and for the working of the modern industrial system. Such points of the theory of credit at large as unavoidably come into the discussion are passed in review in the most summary manner. Familiarity with the terms and concepts employed is presumed to the extent necessary to follow the discussion.

The thesis is advisedly accepted, by men of affairs as well as by economists, that the use of credit is indispensable to a facile working of the modern industrial system. It may be added without hesitation that such use is also unavoidable under modern circumstances. The extensive use of credit follows necessarily from business competition. Credit serves two main uses in the regular course of such business as is occupied with the conduct of industry: (*a*) that of deferred payments in the purchase and sale of goods—book accounts, bills, checks, and the like belong chiefly under this head; and (*b*) loans or debts—notes, stock shares, interest-bearing securities, deposits, call loans, etc., belong chiefly here. These two categories of credit extension are by no means clearly distinct. Forms of credit which commonly serve the one purpose may be turned to the other use; but the two uses of credit are, after all, broadly distinguishable. For many purposes of economic theory such a distinction might not be serviceable, or even practicable; it is here made merely for present use. It is chiefly with credits of the latter class, or rather with credit in so far as it is turned to use for the latter purpose, that this inquiry is concerned.

The most obvious service of loan credit, to which attention is frequently directed, in this connection is that by its use the discretionary control of industrial property is transferred from owners who do not want to manage it to other business-men who wish to assume the management. Seen from the standpoint of the industrial process at large such a transfer may commonly be construed, without violence, as a transfer of management to more competent hands. To the extent to which this is the case there results a presumptive gain in industrial efficiency at large; the consequent advan-



tage to the community is patent, as are also the advantages which result to the borrower or the organizer of any enterprise to which such advances of capital are invited.

But it is to be noted that the business-man does not put his purposes in these terms in seeking an extension of credit, nor need such an extension serve simply this end of shifting the management of the material equipment of industry to more competent or more willing hands. If that were the extent of the functioning of loan credit in industry it would be wholly gratuitous, as well as presumptuous, to offer a discussion of the subject in this place, since that function of credit has been well and largely discussed by many competent economists.<sup>1</sup> This may be the most important function of loan credit, but for the purpose in hand its functioning beyond or aside from this, its main service, is of more immediate interest. That it has substantial consequences of a different kind becomes particularly evident in a period of acute liquidation. At such a time the inconveniences, not to say the disastrous effects, of a large extension of loan credit attract general attention. These disadvantageous consequences, in the way of panic, insolvency, etc., are commonly said to come of an "undue," "abnormal," "excessive," or "illegitimate" extension of credit during that period of speculative advance which commonly precedes the liquidation. But there is no hard and fast line to be drawn between "due" and "undue," or "normal" and "abnormal," extensions of loan credit,<sup>2</sup> as regards either the motives of the borrowers, the methods by which the transactions are carried through, the kind of collateral, or the uses to which the borrowed funds are turned. There may be a somewhat consistent difference on one or more of these points between items which are well within the limits of legitimacy, on the one hand, and of illegitimacy, on the other hand, but the two categories shade off into one another by insensible gradations. Not only that, but with respect to a very appreciable proportion of the items the question as to whether they are an "excessive" extension of credit can be answered only in the light of subsequent facts. If, at a period of liquidation, a given item of loan credit ends its life-history in insolvency, then it was excessive or illegitimate; if not, then it was not. The question of excessiveness, therefore, may, and in the case of an appreciable proportion of loan-credit items it probably does, depend on circumstances of an essentially fortuitous character and which could, therefore, not be foreseen. The "excessive" or undue extension follows as a continuation of the conservative or moderate resort to credit, as a simple progressive change in magnitude, without its being possible to specify a point in the progression beyond which there comes a change in kind. The ulterior test of undueness is insolvency, which is not the result of a given arithmetical proportion of indebtedness to assets, simply, but is an eventuality conditioned by other circumstances as well. Circumstances may change in such a way that a credit extension which was normal or legitimate at its inception will in the course of time become undue or abnormal; as, *e. g.*, if there supervenes a shrinkage

<sup>1</sup> Cf., *e. g.*, KNIES, *Geld*, chap. iii; *Credit*, chap. ix; J. S. MILL, *Political Economy*, Book III, chap. xi.

<sup>2</sup> Cf. LAUGHLIN, "Credit," *Decennial Publications*, Vol. IV, pp. 22-4.

in the value of the collateral.<sup>3</sup> In detail, a given item of credit extension, resting on a given block of collateral, may conceivably be moderate one week, excessive the next week, and moderate again the next week after, owing simply to a fluctuation in the market value of the collateral, without the creditor or debtor having done anything to upset the balance; as will happen, *e. g.*, in the case of a call loan secured by stocks or similar collateral whose quotations fluctuate.

Looked at from this *post factum* standpoint, from which alone the question of an aggregate excessiveness can be confidently judged, the extension of credit is accounted "undue," "excessive," or "abnormal" in so far as the debtors are unable to repay loans falling due, and to pay interest on securities outstanding, without cutting into their paid-up capital or reducing their earnings much below a "reasonable" rate.<sup>4</sup>

The disastrous consequences of an undue extension of credit primarily affect business—the immediate consequence is a liquidation between business-men; secondarily, of course, the liquidation carries a serious disturbance to the industrial process proper. The incentives which determine the business-man's recourse to credit are of the same kind whether the resulting extension proves "excessive" or not. The question therefore becomes: What are the business incentives in the case, and why do these incentives carry the extension of credit to a length which the sequel proves to be undue or illegitimate? It is this question which is here sought to be answered.

Suppose due credit arrangements have already been made—in the way of investments in stocks, interest-bearing securities, and the like—such as to place the management of the industrial equipment in competent hands. This supposition is not a violent one, since a condition roughly approximating to this prevails in any quiescent period of industry, when there is no appreciable depression. Under these "normal" conditions, the capital invested in any given industrial venture is turned over within a certain approximately definite length of time. The length of time occupied by the turnover may vary from one establishment to another, but in any given case the length of the turnover is one of the important factors that determine the chances of gain for the business concern in question. Indeed, if the general conditions of the trade and of the market are given, the two factors which determine the status and value of a given sound concern, as seen from the business-man's standpoint, are the magnitude of the turnover and the length of time it occupies.

The business-man's object is to get the largest aggregate gain from his business. It is manifestly for his interest, as far as may be, to shorten the process out of which his earnings are drawn,<sup>5</sup> or, in other words, to shorten the period in which he turns

<sup>3</sup> *Ibid.*, p. 24.

<sup>4</sup> The question of "undueness" relates to a (varying) proportion between the credit extension and the capitalized value of the collateral, for the time being; it therefore relates to the presumptive earnings of the property represented by the collateral.—See pp. 11, 12, 16, n. 21, below.

<sup>5</sup> This, of course, has nothing to say to Böhm-Bawerk's

theory of the enhancement of production through lengthening the processes of industry. His theory of the "round-about method" applies to the technical, material efficiency of the mechanical process; whereas the point in question here is the interval occupied in the turning over of a given business capital. Böhm-Bawerk's position may be questionable, however, on other grounds.

over his capital. If the turnover consumes less than the time ordinarily allowed in the line of industry in which he is engaged, he gains more than the current rate of profits in that line of business, other things equal; whereas he loses if the turnover takes more than the normal time. This fact is forcibly expressed in the maxim: "Small profits and quick returns." There are two chief means of shortening the interval of the turnover, currently resorted to in industrial business. The first is the adoption of more efficient, time-saving industrial processes. Improvements of technique having this in view are gaining in importance in the later developments of business, since a closer attention is now given to the time element in investments, and great advances have been made in this direction.<sup>6</sup> A second expedient for accelerating the rate of turnover is the competitive pushing of sales, through larger and more persistent advertising, and the like. It is needless to say that this means of accelerating business also receives due attention at the hands of modern business-men.

But the magnitude of the turnover, "the volume of business," is of no less consequence than its rapidity. It is, of course, a trite commonplace that the earnings of any industrial business are a joint function of the rate of turnover and the volume of business.<sup>7</sup> The business-man may reach his end of increased earnings by either the one or the other expedient, and he commonly has recourse to both if he can. His means of increasing the magnitude of the turnover is a resort to credit and a close husbanding of his assets. He is under a constant incentive to increase his liabilities and to discount his bills receivable. Indebtedness in this way comes to serve much the same purpose, as regards the rate of earnings, as does a time-saving improvement in the processes of industry.<sup>8</sup> The effect of the use of credit on the part of a business-man so placed is much the same as if his capital had been turned over a greater number of times in the year. It is accordingly to his interest to extend his credit as far as may be and as far as the state of the market will admit.<sup>9</sup>

But on funds obtained on credit the debtor has to pay interest, which, being deducted from the gross earnings of the business, leaves, as net gain due to his use of credit, only the amount by which the increment of gross earnings exceeds the interest charge. This sets a somewhat elastic limit to the advantageous use of loan credit in business. In ordinary times, however, and under capable management, the current rate of business earnings exceeds the rate of interest by an appreciable amount; and

<sup>6</sup> Cf., e. g., WERNER SOMBAERT, "Der Stil des modernen Wirtschaftslebens," *Archiv für soz. Gesetzg. u. Statistik*, Vol. XVII, pp. 1-20, especially pp. 4-15. Reprinted as chap. iv, Vol. II, of *Der moderne Kapitalismus* (Leipzig, 1902).

<sup>7</sup> Cf., e. g., MARSHALL, *Principles of Economics* (3d ed.), Book VI, chap. vii, secs. 3 and 4.

<sup>8</sup> Cf. LAUGHLIN, "Credit," p. 8.

<sup>9</sup> The turnover will count for more in gross earnings at current rates if instead of his own capital alone the business-man also engages whatever funds he can borrow by using his capital as collateral. The turnover counted on capital (value of the industrial equipment) plus credit, at current rates, will be greater than that counted on

the capital alone used without credit extension. The turnover may be expressed as the product of the mass of values employed multiplied by the velocity. Hence, if credit be taken as an indeterminate fraction of the capital used as collateral, we may say that

$$\text{Turnover} = \frac{1}{\text{time}} \left( \text{capital} + \frac{\text{capital}}{n} \right); \text{ i. e.,}$$

$$T = \frac{1}{t} \left( c + \frac{c}{n} \right) = \frac{c + \frac{c}{n}}{t}; \text{ or } t = \frac{c + \frac{c}{n}}{T}$$

The algebraic statement serves to bring out the equivalence between an acceleration of the rate of turnover and an increase of the volume of business capital.



in times of ordinary prosperity, therefore, it is commonly advantageous to employ credit in the way indicated. Still more so in brisk times, when opportunities for earnings are many and promise to increase. To turn the proposition about, so as to show the run of business motives in the case: whenever the capable business manager sees an appreciable difference between the cost of a given credit extension and the gross increase of gains to be got by its use, he will seek to extend his credit. But under the régime of competitive business whatever is generally advantageous becomes a necessity to all competitors. Those who take advantage of the opportunities afforded by credit are in a position to undersell any others who are similarly placed in all but this respect. Broadly speaking, recourse to credit becomes the general practice, the regular course of competitive business management, and competition goes on on the basis of such a use of credit, as an auxiliary to the capital in hand. So that the competitive earning capacity of business enterprises comes to rest on the basis, not of paid-up capital alone, but of capital plus such borrowed funds as this capital will support. The competitive rate of earnings is brought to correspond with this basis of operation; the consequence being that under such competitive employment of credit the aggregate earnings of an enterprise resting on a given *bona fide* capital will be but slightly larger than it might have been if such a general recourse to credit to swell the volume of business did not prevail. But since such use of credit prevails, a further consequence is that any concern involved in the open business competition, which does not or cannot take recourse to credit to swell its volume of business, will be unable to earn a "reasonable" rate of profits. So that the general practice drives all competitors to the use of the same expedient; but since the advantage to be derived from this expedient is a relative advantage only, the universality of the practice results in but a slight, if any, increase of the aggregate earnings of the business community. Borrowed funds afford any given business-man a differential advantage as against other competitors; but it is, in the main, a differential advantage only. The competitive use of such borrowed funds in extending business operations may, incidentally, throw the management of some portion of the industrial process into more competent or less competent hands. So far as this happens, the credit operations in question and the use of the borrowed funds may increase or diminish the output of industry at large, and so may affect the aggregate earnings of the business community. But, apart from such individual shifting of the management of industry to more competent (or less competent) hands, this competitive use of borrowed funds is without aggregate effect.

The current or reasonable rate of profits is, roughly, the rate of profits at which business-men are content to employ the actual capital which they have in hand.<sup>10</sup> A general resort to credit extension as an auxiliary to the capital in hand results, on the whole, in a competitive lowering of the rate of profits, computed on capital plus credit, to such a point as would not be attractive to a business-man who must confine himself

<sup>10</sup> See MARSHALL, as above.



to the employment of capital without credit extension. On an average, it may be said, under the circumstances of this credit extension the aggregate earnings of the aggregate capital with credit extension are but slightly greater than the aggregate earnings of the same capital without credit extension would be in the absence of a competitive use of credit extension. But under modern conditions business cannot profitably be done by any one of the competitors without the customary resort to credit. Without the customary resort to credit a "reasonable" return could not be obtained on the investment.

All this applies to such extension of credit as exceeds what may serve the purpose of distributing the management of the industrial, material apparatus to competent hands; or, in other words, it applies to such resort to credit as aims at a competitive extension of business on the part of competent managers. Probably at no point in the progressive competitive extension of credit is there no effect had in the way of shifting the management of industry to more competent hands; and at no point, therefore, can it confidently be said that a further extension of credit has no effect in the way of enhancing the efficiency of industry. But, after all is said, it remains true that the extension of credit under modern conditions has the two distinguishable effects here spoken for; and this is the point of the argument.

To the extent to which the competitive recourse to credit is of the character here indicated—to the extent to which it is a competitive bidding for funds between competent managers—it may be said that, taken in the aggregate, the funds so added to business capital represent no material capital or "productive goods." They are business capital only; they swell the volume of business, as counted in terms of price, etc., but they do not directly swell the volume of industry, since they do not add to the aggregate material apparatus of industry, or alter the character of the processes employed, or enhance the degree of efficiency with which industry is managed.

The "buoyancy" which a speculative inflation of values gives to industrial business may indirectly increase the material output of industry by enhancing the intensity with which the industrial process is carried on under the added stimulus; but apart from this psychological effect, the expansion of business capital through credit extension has no aggregate industrial effect. This secondary effect of credit inflation may be very considerable, and is always present in brisk times. It is commonly obvious enough to be accounted the chief characteristic of a period of "prosperity." For a theory of industry this indirect effect of credit inflation would be its main characteristic, but for a theory of business it occupies the place of a corollary only.

To the view set forth above the objection may present itself that all funds borrowed represent property owned by someone (the lender or his creditors) and transferred, in usufruct, by the loan transaction to the borrower; and that these funds can, therefore, be converted to productive uses, like any other funds, by drawing into the industrial process, directly or indirectly, the material items of wealth whose fluent form these funds are. The objection fails at two points: (a) while the loans may be

covered by property held by the lender, they are not fully covered by property which is not already otherwise engaged; and even if such were the case, it would (b) not follow that the use of these funds would increase the technical (material) outfit of industry.

As to the first point (a): Loans made by the financial houses in the way of deposits or other advances on collateral are only to a fractional extent covered by liquid assets;<sup>11</sup> and anything but liquid assets is evidently beside the point of the present question. An inconsiderable fraction of these loans is represented by liquid assets. The greater part of the advances made by banking houses, for instance, rest on the lender's probable ability to pay eventually, on demand or at maturity, any claims that may in the course of business be presented against the lender on account of the advances made by him. It is a business truism that no banking house could at a moment meet all its outstanding obligations.<sup>12</sup> A necessary source of banking profits is the large excess of the volume of business over reserves.

As to (b): Another great part of the basis of such loans is made up of invested funds and collateral held by the lender. These at the same time are much of the basis on which rests the lender's probable ability to pay claims presented. But these investments, in industry or real estate, in interest-bearing securities and collateral of whatever description, represent future income of the lender's debtors (as, *e. g.*, government and municipal securities), or property which is already either engaged in the industrial process or tied up in forms of wealth (as, *e. g.*, real estate) which do not lend themselves to industrial uses. Loans obtained on property which has no present industrial use, which cannot in its present form or under existing circumstances be employed in the processes of industry (as, *e. g.*, speculative real estate), or loans on property which is already engaged in the industrial process (as, *e. g.*, stocks, industrial plant, goods on hand, real estate in use),<sup>13</sup> represent, for the purpose in hand, nothing more substantial than a fictitious duplication of material items that cannot be drawn into the industrial process. Therefore such loans cannot, at least not directly, swell the aggregate industrial apparatus or enhance the aggregate productivity of industry; for the items which here serve as collateral are already previously in use in industry to the extent to which they can be used. Property of these kinds—what is already in use in industry and what is not of use for industrial purposes—may be “coined into means of payment” and so made to serve as additional pecuniary (business) capital, but such property is mechanically incapable of serving as additional material (industrial) capital. To a very considerable extent the funds involved in these loans, therefore, have only a pecuniary (business) existence, not a material (industrial) one; and, so far as that is true, they represent, in the aggregate,

<sup>11</sup> Property convertible into cash at will.

<sup>12</sup> The legally obligatory reserve for national banks in this country, for instance, is 25 per cent. of combined note circulation and deposits in central reserve banks, 15 per cent. in others.—*Revised Statutes*, 5191.

<sup>13</sup> This takes account of advances made by other lenders than the regular banking houses who exclude mortgages on real estate from their collateral; such, *e. g.*, as the long-time advances (investments in securities) made by savings banks, insurance companies, minor private and mortgage banks, private lenders, etc.

only fictitious industrial equipment. Even such inconsiderable portion of them, however, as represents metallic reserves also adds nothing to the effective material apparatus of industry; since money as such, whether metallic or promissory, is of no direct industrial effect; as is evident from the well-known fact that the absolute quantity of the precious metals in use is a matter of no consequence to the conduct of either business or industry, so long as the quantity neither increases nor decreases by an appreciable amount. *Nummus nummum parere non potest.*

So that all advances made by banking houses or by other creditors in a like case; whether the advances are made on mortgage, collateral or personal notes, in the form of deposits, note issues, or what not; whether they are taken to represent the items of property covered by the collateral, the cash reserves of the banks, or the general solvency of the creditor or debtor—all these “advances” go to increase the “capital” of which business-men have the disposal; but for the material purposes of industry taken in the aggregate they are purely fictitious items.<sup>14</sup> Cash loans (such as savings-bank deposits<sup>15</sup> and the like) belong in the same category. All these advances afford the borrower a differential advantage in bidding against other business-men for the control and use of industrial processes and materials; they afford him a differential advantage in the distribution of the material means of industry; but they constitute no aggregate addition to the material means of industry at large. Funds of whatever character are a pecuniary fact, not an industrial one; they serve the distribution of the control of industry only, not its mechanically productive work.

Loan credit in excess of what may serve to transfer the management of industrial materials from the owner to a more competent user—that is to say, in so far as it is not, in effect, of the nature of a lease of industrial plant—serves on the whole not to increase the quantity of the material means of industry nor, directly, to enhance the effectiveness of their use; but, taken in the aggregate, it serves only to widen the discrepancy between business capital and industrial equipment. So long as times are brisk this discrepancy ordinarily goes on widening through a progressive extension of credit. Funds obtained on credit are applied to extend the business; competing business-men bid up the material items of industrial equipment by the use of funds so obtained; the value of the material items employed in industry advances; the aggregate of values employed in a given undertaking increases, with or without a physical increase of the industrial material engaged; but since an advance of credit rests on the collateral as expressed in terms of value, an enhanced value of the property affords a basis for a further extension of credit, and so on.

Now, the base line of business transactions is the money value (market or exchange value, price) of the items involved, not their material efficiency. The value of the money unit is by conventional usage held to be invariable, and the lenders

<sup>14</sup> This truism is frequently overlooked in theoretical discussions; hence, as the present argument requires its due recognition, it is here stated in this explicit way.

<sup>15</sup> The cash loans made by depositors to savings banks in the form of deposits.



perforce proceed on this assumption, so long as they proceed at all.<sup>16</sup> Consequently any increase of the aggregate money values involved in the industrial business enterprises concerned will afford a basis for an extension of loans, indistinguishable from any other basis of capitalized value, even if the increase of capitalized values is due to credit advances previously made on the full cash value of the property hypothecated. The extension of loans on collateral, such as stock and similar values involved in industrial business, has therefore in the nature of things a cumulative character. This cumulative extension goes on, if otherwise undisturbed, so long as no adverse price phenomenon obtrudes itself with sufficient force to convict this cumulative enhancement of capitalized values of imbecility. The extension of credit proceeds on the putative stability of the money value of the capitalized industrial material, whose money value is cumulatively augmented by this extension itself. But the money value of the collateral is at the same time the capitalized value of the property computed on the basis of its presumptive earning capacity. These two methods of rating the value of collateral must approximately coincide, if the capitalization is to afford a stable basis for credit; and when an obvious discrepancy arises between the outcome given by the two ratings, then a re-rating will be had in which the rating on the basis of earning capacity must be accepted as definitive, since earnings are the ground fact about which all business transactions turn and to which all business enterprise converges. A manifest discrepancy presently arises in this way between the aggregate nominal capital (capital plus loans) engaged in business, on the one hand, and the actual rate of earning capacity of this business capital, on the other hand; and when this discrepancy has become patent a period of liquidation begins.

To give an easier view of the part played by loan credit in this discrepancy between the business capital and the earning capacity of industrial concerns, it will be in place to indicate more summarily what are the factors at play.

The earnings of the business community, taken as a whole, are derived from the marketable output of goods and services turned out by the industrial process—disregarding such earnings as accrue to one concern merely at the cost of another. The effective industrial capital, from the use of which this output, and therefore these earnings, arise, is the aggregate of capitalized material items actually engaged in industry. The business capital, on the other hand, is made up of this capitalized industrial material, plus good-will, plus whatever funds are obtained on credit by using this capitalized industrial material as collateral, plus funds obtained on other, non-industrial, property used as collateral. Through the competitive use of funds obtained on credit, as spoken of above, the nominal value of the capitalized industrial material is cumulatively augmented so as to make it approximately equal to its original capitalization plus

<sup>16</sup> Few perhaps would in set terms maintain an argument that the value of money does not vary, but still fewer would, in a credit transaction, proceed on a supposition at variance with that position. As the economists are accustomed to say, money is the standard of deferred payments. It is also, in the unreflecting apprehension of those who have prac-

tically to deal with wealth phenomena, felt to be the standard and inflexible measure of wealth. The fact that this conventional usage is embodied in law acts greatly to fortify the naïve acceptance of money and price as the definitive terms of wealth.



whatever funds are obtained on credit of all kinds. On this basis of an expanded collateral a further extension of credit takes place, and the funds so obtained are incorporated in the business capital and turned to the like competitive use, and so on. Capital and earnings are counted in terms of the money unit. Counted in these terms, the earnings (industrial output) are also increased by the process of inflation through credit, since the competitive use of funds spoken of acts to bid up prices of whatever products are used in industry, and of whatever speculative property is presumed to have some eventual industrial use. But the nominal magnitude (value) of the earnings is not increased in as strong a ratio as that of the business capital; since the demand whereby the values of the output are regulated is not altogether a business demand (for productive goods), but is in great part, and, indeed, in the last resort mainly, reducible to a consumptive demand for finished goods.<sup>17</sup>

Looking at credit extension and its use for purposes of capital as a whole, the outcome which presents itself most strikingly at a period of liquidation is the redistribution of the ownership of industrial property. The funds obtained on credit are in great measure invested competitively in the same aggregate of material items that is already employed in industry apart from any use of loan credit, with the result that the same range of items of wealth are rated at a larger number of money units. In these items of wealth—which, apart from the use of credit, are owned by their nominal owners—the creditors, by virtue of the credit extension, come to own an undivided interest proportioned to the advances which they have made. The aggregate of these items of property comes hereby to be potentially owned by the creditors in approximately the proportion which the loans bear to the collateral plus the loans. The outcome of credit extension, in this respect, is a situation in which the creditors have become potential owners of such a fraction of the industrial equipment as would be represented by the formula  $\frac{\text{loans}}{\text{capitalization} (= \text{collateral} + \text{loans})}$ .<sup>18</sup> In a period of

<sup>17</sup> The market value of the output does not, in fact, keep pace with the inflation of business capital during a period of speculative advance. In order that it should do so, and afford nominal earnings proportionate to the inflated capital, it would be necessary that incomes should increase proportionately to the inflation of capital; but, even if this happened, the expenses of production would thereby be so increased (through the advance of wages and the like) as to offset the entire inflation of values for all consumptive goods and leave only the advance in the values of productive goods as a net margin from which to draw an increase of earnings. The discrepancy under discussion, however, is not due entirely to the presence of credit, and a fully detailed analysis of the causes out of which it arises can, therefore, not properly be presented in this place.

<sup>18</sup> So long as the rating of the capitalized property remains undisturbed, the formula which expresses the creditors' claim maintains the form given above. It then signifies nothing more than that the creditors hold a claim on such a proportion of the aggregate capitalized property involved as their advances bear to the aggregate capitali-

zation. But so soon as a re-rating of the capitalized property enters the problem the formula becomes

$$\frac{\text{loans}}{\text{capitalization} + \Delta \text{capitalization}}$$

or

$$\frac{\text{loans}}{\text{capitalization} - \Delta \text{capitalization}},$$

according as the re-rating of capitalization is in the direction of enhancement or depreciation:  $\frac{1}{\text{cap} + \Delta \text{cap}}$  or  $\frac{1}{\text{cap} - \Delta \text{cap}}$ . During brisk times, when capitalization advances, the claim represented by a given loan covers a decreasing proportion of the aggregate capitalized property involved ( $\frac{1}{\text{cap} + \Delta \text{cap}}$ ); the denominator increases and the quotient consequently decreases. Whereas, in a period of liquidation the ratio of the creditors' claim to the aggregate capitalization increases by force of the lowered rating of the capitalized property ( $\frac{1}{\text{cap} - \Delta \text{cap}}$ ); the quotient increases because the denominator decreases. The numerator remains constant.

liquidation this potential ownership on the part of the creditors takes effect to the extent to which the liquidation is carried through.<sup>19</sup> The precise measure and proportion in which the industrial property of the business community passes into the hands of the creditors in a period of liquidation can of course not be specified; it depends on the degree of shrinkage in values, as well as on the degree of thoroughness with which the liquidation is carried out, and perhaps on other still less ascertainable causes, among which is the degree of closeness of organization of the business community. It is, however, through the shrinkage of market values of the output and the industrial plant that the transfer of ownership to the creditor class takes place. In case no shrinkage of values took place, no such general transfer of ownership to the creditors as a class would become evident.

In point of fact, the shrinkage commonly supervenes, in the course of modern business, when a general liquidation comes; although it is readily conceivable that the period of acute liquidation and its attendant shrinkage of values need not supervene. Such would probably be the case in the absence of competitive investment in industrial material on a large scale. Secondary effects, such as perturbations of the rate of interest, insolvency, forced sales, and the like, need scarcely be taken up here, although it may be well to keep in mind that these secondary effects are commonly very considerable and far-reaching, and that they may in specific instances very materially affect the outcome.

The theoretical result of this summary sketch of loan credit in modern business, so far, seems to be: (*a*) an extension of loan credit beyond that involved in the transference of productive goods from their owners to more competent users is unavoidable under the régime of competitive business; (*b*) such a use of credit does not add to the aggregate of industrially productive equipment nor increase its material output of product, and therefore it does not add materially to the aggregate gross earnings obtained by the body of business-men engaged in industry, as counted in terms of material wealth or of permanent values;<sup>20</sup> (*c*) it diminishes the aggregate net profits obtained by the business-men engaged in industry as counted in such terms, in that it requires them to pay interest, to creditors outside the industrial process proper, on funds which, taken as an aggregate, represent no productive goods and have no aggregate productive effect; (*d*) there results an overrating of the aggregate capital engaged in industry, compared with the value of the industrial equipment at the starting-point, by approximately the amount of the aggregate deposits and loans on collateral; (*e*) the overrating swells the business capital, thereby raises the valuation of collateral, and gives rise to a further extension of credit, with further results of a like nature; (*f*) commonly beginning at some point where the extension of credit is exceptionally large in proportion to the material substratum of productive goods, or where the discrepancy between nominal capital and earning capacity is exceptionally wide,

<sup>19</sup> All those who, at a period of liquidation, are holders of fluent funds or of claims to fixed sums of money are, for the present purpose, in the position of creditors.

<sup>20</sup> This disregards the indirect effects of a speculative advance in the way of heightened intensity of application and fuller employment of the industrial plant.

the overrating is presently recognized by the creditor and a settlement ensues; (*g*) on the consequent withdrawal of credit a forced re-rating of the aggregate capital follows, bringing the nominal aggregate into approximate accord with the facts of earning capacity; (*h*) the shrinkage which takes place in reducing the aggregate rating of business capital from the basis of capital goods plus loans to the basis of capital goods alone, takes place at the expense of debtors and nominal owners of industrial equipment, in so far as they are solvent; (*i*) in the period of liquidation the gain represented by the credit inflation goes to the creditors and claimants of funds outside the industrial process proper, except that whatever is canceled in bad debts is written off; (*j*) apart from secondary effects, such as heightened efficiency of industry due to inflated values, changes of the rate of interest, insolvency, etc., the main final outcome is a redistribution of the ownership of property whereby the creditor class, including holders and claimants of funds, is benefited.

This characterization is intended to apply only to what may be called an "undue" extension of credit, and has nothing to say as to the substantial benefits derived by the business community from what may, by contrast, be called a "due" extension of credit. Neither does it imply depreciation of the use of "undue" credit in business. The view here spoken for plainly involves the position that there is always present, in ordinary times, some appreciable amount of loan credit of this "undue" or "abnormal" character. In brisk times the proportion of such undue credit is large and commonly increases progressively. But the extension of credit need not take on the cumulative character which it bears during a period of speculative advance, or "rising prosperity," unless some effective disturbance of prices and of the market outlook comes in to heighten the incentives that lead business-men to compete for loans. In other words, there seems to be some ill-defined point of equilibrium between prices, earning capacity of capital, interest, and loan credit; and when this equilibrium is seriously disturbed a cumulative extension of credits of an "undue" character is likely to follow. An effective disturbance of the equilibrium, such as is designated by the phrase "brisk times" or "good times," is commonly initiated by an advance in the prices or in the volume of demand for some one or more of the products that are extensively used in industry. It may also, though less commonly, arise from changes in the rate of interest. When this happens it is usually, if not invariably, accompanied by a somewhat general advance in prices. Indeed, in its primary incidence, such a movement may be said to run its course as a sequence of price phenomena turning about the earning capacity of business enterprises.

Since the modern industrial situation began to take form there have been two principal forms of credit transactions current in the usage of the business community for the purpose of investment—the old-fashioned loan, the usage of which has come down from an earlier day, and the stock share whereby funds are invested in a joint stock company or corporation. The latter is a credit instrument, so far as touches the management of



the property represented, in that (in earlier usage at least) it effects a transfer of a given body of property from the hands of an owner who resigns discretion in its control to a board of directors who assume the management of it. In addition to these two methods of credit relation there has, during the modern industrial period, come into extensive use for business purposes a third class of expedients, viz., debentures of one form and another—bonds of various tenor, preferred stock, preference shares, etc., ranging, in point of technical character and degree of liability involved, from something approaching the nature of a bill of sale to something not readily distinguishable in effect from a personal note. The typical (latest and most highly specialized) instrument of this class is the preferred stock. This is in form a deed of ownership, and in effect an evidence of debt. It is typical of a somewhat comprehensive class of securities in use in the business community, in the respect that it ignores the distinction between capital and credit. In this respect, indeed, preferred stock, more adequately perhaps than any other instrument, reflects the nature of the "capital concept" current among up-to-date business-men who are engaged in the larger industrial affairs.

The part which debenture credit, nominal and virtual, plays in the financing of modern industrial corporations is very considerable, and the proportion which it bears in the capitalization of these corporations apparently grows larger as time passes and shrewder methods of business gain ground. In the field of the "industrials" proper, debenture credit has not until lately been employed with full effect. It seems to be from the corporation finance of American railway companies that business-men have learned the full use of an exhaustive debenture credit as an expedient for expanding business capital. It is not an expedient newly discovered, but its free use even in railway finance is relatively late. Wherever it prevails in an unmitigated form, as with some railway companies and latterly in many other industrial enterprises, it throws the capitalization of the business concerns affected by it into a peculiar, characteristically modern, position in relation to credit. When carried out thoroughly it places virtually the entire capital, comprising the whole of the material equipment, on a credit basis. Stock being issued by the use of such funds as may be needed to pay for printing, a road will be built, or an industrial plant established, by the use of funds drawn from the sale of bonds; preferred stock or similar debentures will then be issued, commonly of various denominations, to the full amount that the property will bear, and not infrequently somewhat in excess of what the property will bear. When the latter case occurs, the market quotations of the securities will, of course, roughly adjust the current effective capitalization to the run of the facts, whatever the nominal capitalization may be. The common stock in such a case represents "good-will," and in the later development usually nothing but "good-will." The material equipment is covered by credit instruments—debentures. Not infrequently the debentures cover appreciably more than the value of the material equipment, together with such property as useful patent rights or trade secrets; in such a case the good-



will is also, to some extent, covered by debentures, and so serves as virtual collateral for a credit extension which is incorporated in the business capital of the company. In the ideal case, where a corporation is financed with due perspicacity, there will be but an inappreciable proportion of the market value of the company's good-will left uncovered by debentures. In the case of a railway company, for instance, no more should be left uncovered by debentures than the value of the "franchise," and probably in most cases not that much actually is uncovered.

Whether capitalized good-will (including "franchise" if necessary) is to be rated as a credit extension is a nice question that can apparently be decided only on a legal technicality. In any case so much seems clear—that good-will is the nucleus of capitalization in modern corporation finance. In a well-financed, flourishing corporation good-will, indeed, constitutes the total assets after liabilities have been met, but the total remaining assets may not nearly equal the total market value of the company's good-will; that is to say, the material equipment (plant, etc.) of a shrewdly managed concern is hypothecated at least once, commonly more than once, and its immaterial properties (good-will), together with its evidences of indebtedness, may also to some extent be drawn into the hypothecation.<sup>21</sup>

What has just been said of the part borne by good-will and debentures in the capitalization of corporations should be taken in connection with what was said above (p. 9) as to the securities offered as collateral in procuring credit extension. The greater part of the securities used as collateral, and so coined into means of payment, are evidences of debt, at the first remove or farther from the physical basis, instruments of credit recording a previous credit extension.

In the earlier period of growth of this debenture financiering in industry, as, *e. g.*, in the railroad financiering of the third quarter of the nineteenth century, the process of expansion by means of debenture credit, in any given case, worked out gradually over a more or less extended period of time. But as the possibilities of this expedient have

<sup>21</sup> Any student who harks back to archaic methods of business organization for a norm of what capitalization should be will object that what is said above applies only in a case of gross overcapitalization or stock-watering. But the objection proceeds on obsolete premises. It supposes that the stock of a corporation must represent material wealth, in fact as well as in law. Such is not the case in fact, whatever may be held to be binding in law. The question of "stock-watering," "overcapitalization," and the like is scarcely pertinent in the case of a large industrial corporation, financed as the modern situation demands. Under modern circumstances the stock can scarcely fail to be all "water," unless in a small concern or under incompetent management. Nothing but "water"—under the name of good-will—belongs in the common stock; whereas the preferred stock, which represents material equipment, is a debenture. "Overcapitalization," on the other hand, if it means anything under modern business conditions, must mean overcapitalization as compared with earning capacity, for there is nothing else pertinent to compare with; and earning capacity

fluctuates, while the basis (interest rates) on which the earning capacity is to be capitalized also fluctuates independently.

In effect, the adjustment of capitalization to earning capacity is taken care of by the market quotations of stock and other securities; and no other method of adjustment is of any avail, because capitalization is a question of value, and market quotations are the last resort in questions of value. The value of any stock listed on the exchange, or otherwise subject to purchase and sale, fluctuates from time to time; which comes to the same thing as saying that the effectual capitalization of the concern, represented by the securities quoted, fluctuates from time to time. It fluctuates more or less, sometimes very slowly, but always at least so much as to compensate the long-period fluctuations of discount rates in the money market; which means that the purchase price of a given fractional interest in the corporation as a going concern fluctuates so as to equate it with the capitalized value of its putative earning capacity, computed at current rates of discount and allowing for risks.

grown familiar to the business community the time consumed in perfecting the structure of debentures in each case has been reduced; until it is now not unusual to perfect the whole organization, with its load of debentures, at the inception of a corporate enterprise. In such a case, when a corporation starts with a fully organized capital and debt, the owners of the concern are also its creditors—they are, at the start, the holders of both common and preferred stock, and probably also of the bonds of the company—so adding another increment of confusion to the relation between modern capital and credit, as seen from the old-fashioned position as to what capitalization and its basis should be.

This synocopated process of expanding capital by the help of credit financiering, however, is seen at its best in the latter-day reorganizations and coalitions of industrial corporations; and as this class of transactions also illustrate another interesting and characteristically modern feature of credit financiering, the whole matter may best be set out in the way of a sketch of what takes place in a case of coalition of industrial corporations on a large scale, such as recent industrial history has made familiar.

The avowed end of these latter-day business coalitions is economy of production and sale and an amicable regulation of intercorporate relations. So far as bears on the functioning of credit in the attendant business transactions, the presence or absence of these purposes, of course, does not affect the course of events or the outcome. These avowed incentives do not touch the credit operations involved. On the other hand, the need of large credit in consummating the deal, as well as the presumptive gains to be drawn from the credit relations involved, offer inducements of their own. Inducements of this kind seem to have been quite effective in bringing on some of the recent operations of this class. Credit operations come into these transactions mainly at two points: in the “financing” of the deal, and in the augmentation of debentures; and at both these points there is a chance of gain—on the one hand to the promoter (organizer) and the credit house which finances the operation, and on the other hand to the stockholders. The gain which accrues to the two former is the more unequivocal, and this seems in some cases to be the dominant incentive to effect the reorganization. The whole operation of reorganization may, therefore, best be taken up from the point of view of the promoter, who is the prime mover in the matter.

A reorganization of industrial concerns on a large scale, such as are not uncommon at the present time, involves a campaign of business strategy, engaging, it is said, abilities and responsibilities of a very high order. Such a campaign of business strategy, as carried out by the modern captains of industry, runs, in the main, on credit relations, in the way of financial backing, options, purchases, leases, and the issuance and transfer of stock and debentures. In order to carry through these large “deals,” in the first place, a very substantial basis of credit is required, either in the hands of the promoter (organizer) himself or in the hands of a credit house which “finances” the organization for him.

The strategic use of credit here involved is, in effect, very different from the use

of loan credit in investments. In transactions of this class the time element, the credit period, is an inconspicuous factor at the most; it plays a very subordinate and uncertain part. The volume of credit at the disposal of a given strategist is altogether the decisive point, as contrasted with the lapse of time over which the incident credit extension may run. The usefulness of the credit extension is not measured in terms of time, nor are the gains which accrue to the creditor in the case proportioned to the length of time involved.

This follows from the peculiar nature of the work which these great captains of industry have in hand, and more remotely, therefore, from the peculiar character of the earnings which induce them to undertake the work. Their work, though it is of the gravest consequence to industry, is not industrial business, in that it is not occupied with anything like the conduct of a continuous industrial process. Nor is it of the same class as commercial business, or even banking business, in that there is no investment in a continued sequence of transactions. It differs also from stock and produce speculation, as that is currently conceived,<sup>22</sup> in that it does not depend on the lapse of time to bring a change of circumstances; although it has many points of similarity with stock speculation. In its details this work resembles commercial business, in that it has to do with bargaining; but so does all business, and this peculiar work of the trust promoter differs from mercantile business in the absence of continuity. Perhaps its nearest business analogue is the work of the real-estate agent.

The volume of credit involved is commonly very great; whereas the credit period, the lapse of time, is a negligible factor. Indeed, if an appreciable credit period intervenes, it is a fortuitous circumstance. The time element in these credit operations is in abeyance, or, at the best, it is an indeterminate magnitude. Hence the formula shown above (p. 6, n. 9) is practically not applicable to business of this class. So far as bears upon the credit operations involved in these transactions of the large finance, the question about which interest turns is almost exclusively the volume of the turnover; its velocity is a negligible quantity.

Such strategic use of credit is not confined to the business of making or marring industrial coalitions. It is habitually to be met with in connection with stock (and produce) speculation, and ramifications of the like use of credit run through the dealings of the business community at large in many directions; but it rarely attains the magnitude in the service of stock speculation which it reaches in the campaign incident to a trust-making deal. The form of credit extension employed in these transactions with indeterminate time also varies. The older and more familiar form is that of the call loan, together with the stock-exchange transactions for which call loans are largely used. Here the time element is present, especially in form; but the credit period is somewhat indeterminate, as is also the gain that accrues to the creditor from the transaction; although the creditor's gain here continues to be counted at a

<sup>22</sup> See, e. g., EMERY, *Speculation on the Stock and Produce Exchanges of the United States*, chap. iv; HADLEY, *Economics*, chap. iv.



(variable) rate per cent. per time-unit. The strategic use of credit in the affairs of the large business finance has much in common with the call loan. Indeed, the call loan in set form is often resorted to as a valuable auxiliary expedient, although the larger arrangements for financing such a campaign of business strategy are not usually put in the form of a call loan. The arrangement between the promoter and the financial agent is commonly based on a less specific stipulation as to collateral, and the payment for credit obtained takes even less, if any, account of the length of the credit period. In financing a campaign of coalition the credit house that acts as financial agent assumes, in effect, an even less determinate credit responsibility. Here, too, the gains accruing to the creditor are no longer, even nominally, counted per cent. per time-unit, but rather in the form of a bonus based mainly on the volume of the turnover, with some variable degree of regard to other circumstances.

Answering to the essentially timeless character of the gains accruing to the financial agent, the earnings of the promoter engaged in transactions of this class are also not of the nature of profits per cent. per time-unit, but rather a bonus which commonly falls immediately into the shape of a share in the capitalization of the newly organized concern. Much of this increment of capital, or capitalization, that goes to the promoter is scarcely distinguishable from an increase of the liabilities of the new corporation (*e. g.*, preferred stock); and the remainder (*e. g.*, common stock) has also some of the characteristics of a credit instrument. It is worth noting that the cost of reorganization, including the bonus of the promoter and the financial agent, is, in the common run of cases, added to the capitalization; that is to say, as near as this class of transactions may be spoken of in terms borrowed from the old-fashioned business terminology, what answers to the "interest" due the creditor on the credit extension involved is incorporated in the "capital" of the debtor, without circumlocution or faltering.

The line between credit and capital, or between debt and property, in the values handled throughout these strategic operations of coalition, remains somewhat uncertain. Indeed, the old-fashioned concepts of "debt" and "property," or "liabilities" and "assets," are not fairly applicable to the facts of the case—except, of course, in the way of a technical legal distinction. The old-fashioned law and legal presumptions and the new-fashioned facts and usages are parting company, at this point as at some others in the affairs of modern business.

When such a large transaction in the reorganization of industrial concerns has been completed, the values left in the hands of the former owners of the concerns merged in the new coalition are only to a fractional and uncertain extent of the nature of material goods. They are in large part debentures, and much of the remainder is of a doubtful character. A large proportion of the nominal collective capital resulting in such cases is made up of the capitalized good-will of the concerns merged. This good-will is chiefly a capitalization of the differential advantages possessed by the several concerns as competitors in business, and has for the most part no use for other



than competitive business ends. It is for the most part of no aggregate industrial effect. But the differential advantages possessed by business concerns as competitors disappear when the competitors are merged, in the degree in which they cease to compete with rival bidders for the same range of business. As an element in the capitalization of the new corporation, therefore, this defunct good-will has a value analogous to the present value of the competitive merits of last year's fashions in bonnets. To this aggregate good-will of the consolidated concerns (which in the nature of things can make only an imaginary aggregate) is added something in the way of an increment of good-will belonging to the new corporation as such; and the whole is then represented, approximately, by the common stock issued. The nominal capital of the concerns merged (in good part based on capitalized good-will) is aggregated, after an appraisalment which commonly equalizes the proportion of each by increasing the nominal shares of all. This aggregate is covered with common and preferred stock, chiefly preferred, which is a class of debentures issued under the form of capital. The stock, common and preferred, goes to the owners of the concerns merged, and to the promoter and the financial agent, as already indicated above. In case bonds are issued, these likewise go to the former owners, in so far as they do not replace outstanding liabilities of the concerns merged.

"Capital" in modern business usage means "capitalized presumable earning capacity," and in this capitalization is comprised the usufruct of whatever credit extension the given business concern's industrial equipment and good-will will support. By consequence the effectual capitalization (shown by the market quotations) as contrasted with the nominal capital (shown by the par value of the stock of all descriptions) fluctuates with the fluctuations of the prevalent presumption as to the solvency and earning capacity of the concern and the good faith of its governing board.

When the modern captain of industry reorganizes and consolidates a given range of industrial business concerns, therefore, and gives them a collective form and name as an up-to-date corporation, the completed operation presents, in syncopated form and within a negligible lapse of time, all that intricate process of cumulative augmentation of business capital through the use of credit which otherwise may come gradually in the course of business competition. At the same time it involves a redistribution of the ownership of the property engaged in industry, such as otherwise occurs at a period of liquidation. The result is, of course, not the same at all points, but the equivalence between the two methods of expanding business capital and distributing the gains is close in some respects. The resemblances and the differences between the two processes, so far as relates to credit, are worth noticing. The trust-maker is in some respects a substitute for a commercial crisis.

When credit extension is used competitively in the old-fashioned way for increasing the business of competing concerns, as spoken of above (pp. 6-8, 12-14), the expansion of business capital through credit operations occupies a period of some

duration, commonly running over an interval recognized as a period of speculative advance or "rising prosperity." The expansion of capitalized values then takes place more or less gradually through a competitive enhancement of the prices of industrial equipment and the like. The creditors then commonly come in for their resulting share in the industrial equipment only at the period of liquidation, with its attendant shrinkage of values. In the timeless credit transactions involved in the modern reorganizations of industrial business, on the other hand, the creditors' claim takes effect without an appreciable lapse of time, a liquidation, or a shrinkage of values.

The whole process of credit extension, augmentation of business capital, and distribution of proceeds is reduced to a very simple form. The credit extension is effected in two main forms: (*a*) the "financing" undertaken by the credit house in conjunction with the promoter, and (*b*) the issuance of debentures. The bonus of the financing house and promoter, as well as the debentures, are all included in the recapitalization, together with an increment of good-will and any other incidental items of expense or presumptive gain. The resulting collective capitalization (assets and liabilities) is then distributed to the several parties concerned in the transaction. The outcome, so far as touches the present argument, being that when the operation is completed the ownership of the recapitalized industrial equipment, with whatever other property is involved, appears distributed between the former owners, the promoter, and the credit house which financed the operation. But, by virtue of the debentures distributed, the former owners, together with the other parties named, appear in the rôle of creditors of the new corporation as well as owners of it; they commonly come out of the transaction with large holdings of preferred stock or similar debentures at the same time that they hold the common stock. The preferred stock, of course, is presently disposed of by the large holders to outside parties. The material equipment is then practically the same as it was before; the business capital has been augmented to comprise such proportion of the good-will of the several concerns incorporated as had not previously been capitalized and hypothecated, together with the good-will imputed to the new corporation and the debentures which these items of wealth will float.

The effective capitalization resulting is, of course, indicated by the market quotations of the securities issued rather than by their face value. The value of the corporation's business capital so indicated need suffer no permanent shrinkage; it will suffer none if the monopoly advantage (good-will) of the new corporation is sufficient to keep its earning capacity up to the rate on which the capitalization is based.

It appears, then, that in the affairs of latter-day business, as shown by modern corporation finance, capital and credit extension are not always distinguishable in fact, nor does there appear to be a decisive business reason why they should be distinguished. "Capital" means "capitalized putative earning capacity," expressed in terms of value, and this capitalization comprises the use of all feasible credit extension. The business capital of a modern corporation is a magnitude that fluctuates from day

to day; and in the fluctuations of its debentures the magnitude of its credit extension also fluctuates from day to day with the course of the market. The precise pecuniary magnitude of the business community's invested wealth, as well as the aggregate amount of the community's indebtedness, depends from hour to hour on the quotations of the stock exchange; and it rarely happens that it remains nearly the same in the aggregate from one week's end to the next. Both capital and credit, therefore, vary from hour to hour and, within narrow limits, from place to place. The magnitude and fluctuations of business capital—"capital" in the sense in which that term is used in business affairs—of course stands in no hard and fast relation to the material magnitude of the industrial equipment; nor do variations in the magnitude of the business capital reflect variations in the magnitude or the efficiency of the industrial equipment in any but the loosest and most indecisive manner. So also, and for the same reason, the magnitude and the variations of the aggregate credit afloat at a given time bear, at the most, but a remote, indirect, and shifty relation to the aggregate of material wealth and the changes to which it is subject. All this applies with peculiar cogency wherever and in so far as industry and business are carried on by modern expedients and in due contact with the modern market.

PHYSICAL CHARACTERS OF INDIANS OF  
SOUTHERN MEXICO





## THE PHYSICAL CHARACTERS OF THE INDIANS OF SOUTHERN MEXICO

FREDERICK STARR

IN the summer of 1895, the casual meeting with a group of Mixe Indians, at Mitla, greatly aroused our interest. Having occasion, six months later, to visit Guatemala, we determined to make the journey from Oaxaca to the city of Guatemala by horse through the Mixe country, in order that we might see more of these interesting, but little known, Indians. Passing, in that journey, through the territories of a dozen different tribes, we were profoundly impressed by the physical differences which the Indians of these tribes presented. Linguistic differences among the Indians of the Isthmian group have long since been admitted. Our earliest field-study in Mexican archæology had already impressed upon us the necessity of differentiating the ancient cultures of Mexico—not one uniform Aztec art presents itself for study, but a number of distinct cultures. In the physical types we now saw a third line of notable differences between Mexican populations and one which appeared to be as deserving of study as either of the others. We believed that the three lines of variation—linguistic, archæological, somatic—should have a common explanation, that all were related, and that all were important in questions of origin, development, and relationship. Accordingly, in the course of that journey, the plan of study of which this paper is the report took form.

Three sorts of investigation have been pursued in order to define the physical types of these tribes. Measurements have been made, photographs have been taken, and plaster busts have been molded. Twenty-three tribes have been examined. It was planned to measure one hundred men and twenty-five women in each tribe. Fourteen measurements were taken upon each subject, the list of measurements being that used by Dr. Franz Boas in his World's Columbian Exposition investigation of the tribes of the United States. If we had made the number indicated, in every tribe, we should have measured a total of 2,875 persons; we actually measured 2,847. One hundred does not make a large series; it is, however, more than are contained in four-fifths of the series accessible to anthropologists, and is a large enough number to give weight to the results secured. Deniker, in *The Races of Man*, quotes series of twenty-five or more. We have taken this number, as a minimum of utility, as the limit for our series of women. Characters of race are better marked in men than in women; women of all tribes are, therefore, more alike than the men; it is more difficult to secure women for measurement than men; when secured, they are less easily measured, on account of stubbornness, stupidity, or fear. These are the reasons why a less number of female than of male subjects was demanded.

Our second method of investigation was by photography. As the 125 subjects passed through our hands for measurement, we selected those which seemed to best present the tribal type for photographing. Usually none were selected until enough subjects had been measured and examined for a clear idea of the type to be present in our mind. Front and side views were made of each person photographed. Approximately six hundred negatives of this sort were taken. A considerable selection from these has already been published, under the title *Indians of Southern Mexico: an Ethnographic Album*. Besides portraits to show the physical types, this work contains many views of villages, buildings, groups, industries, etc., etc. The second and final volume of this album is now ready for the engraver. From among the portrait negatives we have selected sixty of the most characteristic; they represent twenty-three males and seven females, front and side view of each; the twenty-three males included one representative of each tribe. From these negatives a series of life-size platinum-paper prints has been made, of the exact size of life, for museum use. Only fifty sets of these most life-like portraits are to be published. The reduced half-tone engravings with which this paper is illustrated were made from these same negatives.

Five busts were to be made in each tribe. Molds were made directly upon the subject, and a first (pattern) bust was run before we left the town where the investigation was going on. The mold was chipped away and the bust carried with us. After returning home these busts were placed, together with the photographs of the same subjects, in the hands of a competent and conscientious artist, who carefully repaired breakages or imperfections, opened the eyes, and put on the hair. The series of busts absolutely made overran one hundred, but it has been reduced to exactly one hundred by eliminating the less desirable. All the tribes are represented in this series by from two to five subjects. Four sets only of these busts are to be run, and it is expected that they will be located in as many different countries.<sup>1</sup>

The tribes visited live in the states of Mexico, Michoacan, Hidalgo, Puebla, Tlaxcala, Vera Cruz, Oaxaca, Chiapas, and Yucatan. The list, in the order visited, is: 1, Otomis; 2, Tarascans; 3, Tlaxcalans; 4, Aztecs; 5, Mixtecs; 6, Triquis; 7, Zapotecs (Mitla); 8, Mixes; 9, Zapotecs (Tehuantepec); 10, Juaves; 11, Chontals; 12, Cuicatecs; 13, Chinantecs; 14, Chochos; 15, Mazatecs; 16, Tepehuas; 17, Totonacs; 18, Huastecs; 19, Mayas; 20, Zoques; 21, Tzotzils; 22, Tzendals, 23, Chols. The location of these tribes is shown upon the accompanying map, their areas being numbered to correspond with those in the list.

The only basis of classification of Mexican Indians has been the linguistic. We have naturally been interested in seeing how far the relationships indicated by language harmonized with the evidence of physical characters. The agreement was hardly so strong as was anticipated. Where results of interest seem to be brought out, we tabu-

<sup>1</sup>Our expeditions were limited to about three months in each of four years: 1898, 1899, 1900, 1901. My helpers were Bedros Tatartian, Charles B. Lang, and Louis Grabic, photographers in the field; Anselmo Pacheco and Ramon

Godinez, plaster-workers in the field; Aug. Hubert, modeler; Alvin G. Synnberg, engraver; Manuel Gonzales, field-helper; William L. Koehne, photographer in the studio. To all our thanks are due and hereby given.

late the data regarding linguistically related tribes. It may be well to indicate here the linguistic affinities of our tribes. The latest important work upon the Mexican languages is Dr. Nicholas Leon's *Linguistic Families of Mexico*. According to it, the twenty-three tribes in question are grouped as follows:

Nahuatlan Family: Aztecs, Tlaxcalans, Chontals (?).

Tarascan Family: Tarascans.

Zoquean Family: Zoques, Mixes.

Totonacan Family: Totonacs.

Zapotecan Family: Zapotecs, Cuicatecs, Chochos, Mazatecs, Triquis, Chontals (?), Tehuantepecanos, Mixtecs.

Othomian Family: Otomis.

Mayan Family: Mayas, Huastecs, Tzendals, Tzotzils, Chols.

Huavian Family: Juaves.

Chinantecan Family: Chinantecs.

The Tepehuas, whom Orozco y Berra leaves unclassified, are not mentioned by Dr. Leon. They live in several villages in the region where the states of Hidalgo and Vera Cruz come together. Some data relative to them may be found in our *Notes on the Ethnography of Southern Mexico*, pp. 83-6 (reprinted from the *Proceedings Davenport Academy of Sciences*, Vol. VIII, 1900). They present much of interest, and we hope to print further regarding them.



Before presenting the actual results of our study some brief statements of method and generalizations are necessary. Stature, shoulder-height, and height of second finger-tip (the arms hanging at the sides, with the hands open) were taken in rapid succession, to prevent change of position on the part of the subject. When, as happened rarely, the subject was not barefoot, the height of the heel of the shoe was measured and subtracted from all the measures into which it entered. The shoulder-width was the bi-acromial measure. Two face-heights were taken: one was from the line of hair and forehead to the chin, the other from the nasion—or the external point corresponding to it—to the chin.

In South Mexican Indians the hair is usually coarse, straight, and black. This



is true of all tribes. There is, however, a little individual variation in form and color in some tribes; such are mentioned in the descriptions of tribes. The graying of hair, with advancing age, varies considerably with tribes; in some it is rare, in others rather common. Thinning of hair on the top of the head, as age advances, occurs in few tribes. A slight degree of waviness or curliness is sometimes to be seen, but only in one tribe, the Chontals, was it strikingly frequent. All these variations in hair growth or color are interesting, and show racial differences or indicate mixture of bloods. The growth and distribution of the beard is strikingly constant, though occasional tribal differences can be made out. Usually, the growth on the upper cheeks is scanty, scattered, and well forward; on the lower cheeks, none; on the chin, it varies from scanty to medium, but is apt to be localized upon the tip of the chin; the moustache is the heaviest part of the beard, and the first to appear. To economize space we summarize the descriptions of beard growth, in the tribal accounts, after a sort of formula, which applies to upper cheeks, lower cheeks, chin; moustache. The beard, but more particularly the moustache, is often lighter than the head-hair, being brown, or light brown, while the head-hair is black; the beard also, especially the moustache, grays relatively early, and may be gray, or even white, before there is even a sprinkling of gray hairs upon the head.

The eyes of Mexican Indians, like those of our own Indians, are generally of a brown so dark as to be almost black. In the matter of eye color there is little variation. Sometimes a little fading takes place with age, and brown or light brown eyes are more common in old persons than in others. Apparently "oblique" eyes, like those of the Chinese, are frequent in some tribes, but are not universal in any; a less degree of obliquity, which in our records is designated as  $\frac{1}{2}$ -mongoloid, or  $\frac{1}{4}$ -mongoloid, occurs quite commonly in some tribes where no true cases of obliquity were noted; in one or two tribes there was observed a tendency to the opposite condition — *i. e.*, a slight obliquity, in which the outer corner of the eye seemed lower than the inner; in several tribes the eyes appear horizontal, and no cases, even of slight obliquity, occurred. In nearly all the tribes the eyes are widely separated, and in none were they notably close together.

We need not comment at length upon the descriptive characters of the nose, lip, and ear. We may merely remark that the ears are of medium size and rather uniform, and that they rarely present those stigmata of degeneracy of which so much study has been made. They are usually well shaped and project but little from the head. The lobe is usually of fair size and well formed, though it is usually more or less attached.

In recording skin color we used the little book prepared by Dr. Boas in 1892. This was withdrawn before his investigation ended, but having no better series we have continued to employ it. Only seven of its colors occur, with any frequency, among our Mexican tribes, and these we have reproduced in the accompanying color-chart, where their original reference numbers are retained. Of course, no Indian ever

presents a single, simple, dead color, such as are here given; these are foundation colors, which are livened up with tints of red or yellow. There is a notable variety of color among these tribes.

The records regarding the number of children borne are below the reality. Records were made for all women who have had children, even for young mothers who had their first infant in their arms. Unmarried women below twenty-five are not recorded; women above twenty-five, but unmarried, are so recorded; married women without children, more than twenty-five years of age, are recorded as barren.

No serious attempt was made to secure information regarding kinds of diseases or their frequency. Such diseases, however, as *pinto*, goitre, cataract, and such results of disease as pock-marking were generally recorded. In regard to *pinto* and goitre the records probably give some idea of their actual frequency.

We may first examine some general tables, wherein measurements or indices from the different tribes are compared, and then we may consider the data regarding each tribe in detail:

TABLE I. STATURE

No. of Cases	Tribe	Mean	EXTREMES		Range	Little Statures, — 1,60	Below Mean, 1,60-1,64	Above Mean, 1,65-1,69	Tall, 1,70 —
			Max.	Min.					
100	Mazatecs .....	1,551.3	1,664	1,433	232	86	10	4	0
99	Triquis .....	1,551.4	1,679	1,351	329	79	17	3	0
100	Mayas .....	1,552.4	1,675	1,452	224	80	16	4	0
100	Tzendals .....	1,557.1	1,722	1,403	320	75	18	6	1
100	Chols .....	1,557.9	1,686	1,436	251	70	25	5	0
100	Tzotzils .....	1,559.0	1,669	1,445	225	78	19	3	0
100	Tepehuas .....	1,559.7	1,685	1,470	216	83	14	3	0
100	Mixtecs .....	1,561.3	1,755	1,421	335	72	25	1	2
100	Chochos .....	1,562.2	1,684	1,437	248	77	17	6	0
100	Cuicatecs .....	1,562.3	1,736	1,365	372	77	17	4	2
100	Huastecs .....	1,570.3	1,693	1,413	281	71	19	10	0
100	Totonacs .....	1,573.4	1,669	1,488	182	73	22	5	0
100	Mixes .....	1,574.4	1,714	1,553	162	70	21	8	1
100	Chinantecs .....	1,575.8	1,700	1,430	271	69	23	7	1
100	Otomis .....	1,579.7	1,718	1,421	298	53	35	11	1
100	Zapotecs (Mitla) .....	1,586.4	1,772	1,432	341	58	32	6	4
100	Aztecs .....	1,590.2	1,776	1,465	312	53	29	16	2
80	Chontals .....	1,598.0	1,768	1,391	378	60	26	12	2
100	Juaves .....	1,599.6	1,733	1,473	261	55	26	15	4
100	Zoques .....	1,600.0	1,766	1,442	325	49	36	12	3
100	Tarasceans .....	1,600.4	1,718	1,450	269	49	33	16	2
100	Tlascalans .....	1,603.4	1,787	1,493	295	43	36	18	3
99	Zapotecs (Teh.) .....	1,605.0	1,730	1,476	255	48	32	16	4

As shown by the table, nineteen of these tribes are of "little statures"—*i. e.*, below 1,600 mm.; four are "below mean"—*i. e.*, from 1,600 to 1,650 mm. Even the

tallest tribes of all, the Zapotecs of Tehuantepec, are only in the lowest part of this group. No tribe, as a tribe, presents a mean stature "above mean," and the greatest number of "tall" individuals in any tribe is only four. The two shortest tribes, Mazatecs and Triquis, are linguistic relations; they are, however, linguistically related to the Tehuantepecanos, who are the tallest of the whole list. The actual differences in these statures is considerable, 53.7 mm., or something like  $2\frac{1}{8}$  inches. The sex difference in stature is notable. Deniker, supporting himself upon Topinard, states the usual sexual difference for mankind to be 12 cm., with a range of 7 cm. to 13 cm. Taking our tribes in the order of the table we find the difference in mean statures for the two sexes to be as follows: 98.6, 126.1, 137.2, 118.7, 144.9, 117.7, 124.3, 93.4, 128.8, 112.3, 97.6, 142.9, 116.0, 177.0, 124.0, 107.0, 128.4, 117.4, 136.6, 125.2, 118.6, 119.8, 95.6. The average of these differences is 122.09, showing that the women in these tribes are really shorter than the men in an unusual degree. The *actual* difference is small, but even small differences in means are significant. It will also be noticed that no case nearly approaches Topinard's minimum difference of 7 cm. (70 mm.), the smallest difference in our list being 93.4; there are also five cases—137.2, 144.9, 142.9, 177.0, and 136.6—which surpass his maximum difference of 13 cm. (130 mm.). A final observation of interest in regard to stature is that children, in most of the tribes, are often larger than their parents; this may indicate a recent improvement in food-supply or mode of life.

TABLE II. ARM INDEX

No. of Cases	Tribe	Mean	EXTREMES		Range	No. of Cases	Tribe	Mean	EXTREMES		Range
			Max.	Min.					Max.	Min.	
100	Mixes .....	44.6	48.7	40.6	8.2	100	Tlaxcalans .....	45.4	50.3	40.8	9.6
100	Mixtecs.....	44.8	47.7	38.0	9.8	100	Mazatecs .....	45.5	48.1	41.3	6.9
100	Tzotzils.....	45.0	49.3	41.2	8.2	100	Juaves .....	45.5	48.4	42.4	6.1
100	Otomis .....	45.0	49.6	40.8	8.9	100	Tzendals .....	45.5	48.7	42.8	6.0
100	Zapotecs (Mitla) ..	45.1	47.9	40.5	7.5	100	Totonacs .....	45.5	48.3	43.2	5.2
100	Tarasceans .....	45.1	48.8	39.2	9.7	80	Chontals .....	45.6	51.1	42.6	8.6
100	Cuicatecs .....	45.1	47.5	40.2	7.4	100	Aztecs .....	45.7	52.5	43.3	9.3
99	Triquis.....	45.2	46.7	40.2	6.6	99	Zapotecs (Teh.)..	45.7	49.0	37.9	11.2
100	Chols.....	45.3	48.4	40.8	7.7	100	Tepehuas.....	45.8	51.2	42.9	8.4
100	Huastecs .....	45.3	48.4	40.0	8.5	99	Chochos.....	45.9	50.7	43.4	7.4
100	Chinantecs .....	45.4	48.8	41.8	7.1	100	Mayas.....	46.0	48.5	42.7	5.9
100	Zoques.....	45.4	52.6	43.3	9.4						

The arm index is the proportion, or relation, between the length of the arm (found by subtracting the third from the second of the measures on the list) and the stature, the latter being taken at 100. The difference between the extreme indices 44.6 and 46.0 is not great; the mean of the indices is 45.3, while the median is 45.4.



The mean of indices of five French series given by Topinard is 45.0<sup>2</sup>; white soldiers, measured in the United States at the time of the Civil War, gave 43.4; Iroquois Indians, measured at the same time, gave 45.1; American negroes gave 45.2. A recent examination of West Soudan negroes gave Girard 46.8<sup>3</sup>. Shoshonean tribes give 44.6<sup>4</sup>. These results are not clear; on the whole they indicate that our Mexican Indians have long arms as compared with whites, American negroes, and some United States Indians, but short as compared with Soudanese negroes.

TABLE III. FINGER-REACH INDEX

No. of Cases	Tribe	Mean	EXTREMES		Range	No. of Cases	Tribe	Mean	EXTREMES		Range
			Max.	Min.					Max.	Min.	
100	Mixtecs .....	102.1	108.0	94.4	13.7	99	Tlaxcalans ...	103.2	110.6	95.8	14.9
100	Zapotecs (Mit.)	102.3	107.4	96.6	10.9	99	Mixes .....	103.3	108.6	99.9	8.8
100	Cuicatecs ....	102.4	109.4	94.3	15.2	100	Tzendals ....	103.4	109.3	97.7	11.7
98	Triquis .....	102.6	108.0	97.3	10.8	100	Aztecs .....	103.6	110.2	98.7	11.6
100	Juaves .....	102.7	107.2	96.3	11.0	100	Huastecs .....	103.7	109.0	99.5	9.6
98	Tzotzils .....	102.7	106.7	96.7	10.1	99	Zapotecs(Teh.)	103.8	110.2	94.5	15.8
100	Tarascans ....	102.8	108.4	95.5	13.0	100	Chols .....	103.8	109.4	98.2	11.3
99	Chinantecs...	102.8	109.9	93.6	16.4	100	Mazatecs .....	104.1	110.1	99.7	10.5
99	Chochoz .....	103.0	111.7	97.2	14.6	100	Totonacs .....	104.1	110.0	99.4	10.7
100	Otomi .....	103.0	110.1	97.3	12.9	100	Tepehuas ....	104.5	109.7	99.8	10.0
80	Chontals .....	103.1	110.0	98.4	11.7	100	Mayas .....	105.6	111.7	100.2	11.6
100	Zoques .....	103.2	108.6	96.6	12.1						

The finger-reach, or the measure along the horizontally outstretched arms from the tip of the middle finger of one hand to the tip of the middle finger of the other, is approximately the same as the stature. The finger-reach index is obtained by comparing this measure with the stature, taken at 100. For series of South Europeans this index ranges from 99.9 to 104.4; among Livonians and Esthonians it is 106.6 and 107.4. In negroes and Iroquois Indians it rises to 108 and more. Among these Mexican tribes it ranges from 102.1 to 105.6, which cannot be considered very large. This index depends upon two elements, the shoulder-width and the arm-length. It is always less than the sum of the shoulder index and twice the arm index. This reduction is due to the fact that, when the arms are extended, a part of their length is lost by the sinking of the head of the humerus into the socket at the shoulder-joint. As the arms are rather long, and the shoulder-width rather great, we should expect a more notable finger-reach.

Comparatively few investigators have calculated the sitting height index, and we have too little material regarding it, at hand, for satisfactory comparison. No doubt

<sup>2</sup> TOPINARD, *Elements gen.*, p. 1076. These means, calculated with respect to the actual numbers of cases in the series, are: French, 45.1; Mexican Indians, 45.39.

<sup>3</sup> L' *Anthropologie*, Vol. XIII, p. 179.

<sup>4</sup> BOAS, *American Anthropologist*, Vol. I, p. 757.



TABLE IV. HEIGHT-SITTING INDEX

No. of Cases	Tribe	Mean	EXTREMES		Range	No. of Cases	Tribe	Mean	EXTREMES		Range
			Max.	Min.					Max.	Min.	
80	Chontals.....	51.6	55.2	47.3	8.0	100	Mazatecs.....	52.5	56.1	49.4	6.8
99	Zapotecs (Teh.)..	51.6	55.8	48.2	7.7	100	Zoques.....	52.5	56.2	48.2	8.1
100	Mayas.....	51.7	54.5	47.9	6.7	100	Cuicatecs.....	52.6	56.8	48.6	8.3
100	Aztecs.....	51.8	55.4	47.5	8.0	100	Chochoes.....	52.7	57.2	49.9	7.4
100	Juaves.....	51.8	53.9	49.6	4.4	100	Tlaxcalans.....	52.7	55.1	49.4	5.8
100	Otomis.....	51.8	56.9	47.9	9.1	100	Huastecs.....	52.8	55.9	49.7	6.3
100	Tarasceans.....	52.0	55.4	48.4	7.1	100	Tepehuas.....	53.0	58.2	50.4	7.9
99	Triquis.....	52.1	56.1	48.6	7.6	100	Tzotzils.....	53.2	58.3	49.1	9.3
98	Mixes.....	52.1	54.8	48.3	6.6	100	Totonacs.....	53.2	56.2	50.7	5.6
100	Mixtecs.....	52.2	56.9	49.0	8.0	100	Tzendals.....	53.3	58.8	50.7	8.2
100	Zapotecs (Mitla)..	52.3	55.9	47.8	8.2	100	Chinantecs.....	53.9	56.6	51.4	5.3
100	Chols.....	52.4	55.9	48.6	7.4						

the data for such a table exists, but we have not had time for compiling it. Boas (*loc. cit.*), gives the Shoshonean index at 52.2. From Verneau's measurements,<sup>5</sup> we find the index for three tribes of African negroes to be 48.5, 49.2, 48.2. The mean of the indices in our table is 52.4. This is relatively high and shows that these tribes have long trunks. The impression one receives from seeing these people is that they have a great sitting height, a condition to be expected among mountain tribes, where the rarity of the air would seem to necessitate ample lung capacity. We had expected to find the variation in this particular directly related to altitude. In this expectation we were disap-

TABLE V. SHOULDER-WIDTH INDEX

No. of Cases	Tribe	Mean	EXTREMES		Range	No. of Cases	Tribe	Mean	EXTREMES		Range
			Max.	Min.					Max.	Min.	
100	Otomis.....	21.5	24.6	19.4	5.3	100	Cuicatecs.....	22.4	24.3	20.4	4.0
99	Tlaxcalans.....	21.8	24.5	19.6	5.0	98	Mixes.....	22.6	25.8	20.7	5.2
100	Tzendals.....	21.9	24.2	19.8	4.5	100	Mixtecs.....	22.6	24.6	20.4	4.3
100	Tarasceans.....	21.9	24.4	19.0	5.5	100	Totonacs.....	22.7	25.1	19.7	5.5
100	Aztecs.....	21.9	24.7	19.6	5.2	98	Triquis.....	22.8	25.3	20.7	4.7
80	Chontals.....	21.9	23.8	19.2	4.7	100	Huastecs.....	22.8	24.8	20.9	4.0
100	Chols.....	22.1	25.1	19.7	5.5	100	Tepehuas.....	22.8	25.1	21.0	4.2
100	Zapotecs (Mitla)..	22.1	24.3	19.9	4.5	100	Mazatecs.....	22.9	25.7	21.3	4.5
100	Tzotzils.....	22.2	24.3	19.7	4.7	99	Zapotecs (Teh.)..	23.0	25.0	20.1	5.0
100	Zoques.....	22.2	25.4	19.7	5.8	100	Mayas.....	23.1	25.3	21.0	4.4
100	Juaves.....	22.3	25.2	20.2	5.1	100	Chochoes.....	23.2	26.1	20.1	6.1
100	Chinantecs.....	22.4	24.5	20.5	4.1						

<sup>5</sup> "Oulofs, Leybous et Seyrerres," *L'Anthropologie*, Vol. VI, pp. 510-28.

pointed. It is true that the Chontals, Tehuantepecanos, Mayas, and Juaves, who live in places near sea level, are short in sitting height, thus seeming to sustain our supposition; but the Huastecs (linguistically related to the Mayas), who also live at a slight elevation, have a long trunk. Aztecs and Otomis live on the high plateau, but are near the lowland tribes in sitting-height index.

We were constantly impressed by the apparent fine development of chest in many individuals, and expected to find the shoulder-index large and varying with altitude. The actual figures hardly meet our expectations. Compared with the indices given in Topinard (*loc. cit.*, p. 1082) they are rather large. The measurements taken at the time of our Civil War give white Americans 18.9 and 19.6; Iroquois Indians, 18.8, and American negroes 21.3. All of these fall below our minimum, the Otomis, at 21.5. Boas's Shoshoneans (*loc. cit.*) gave 23.2, which agrees with our maximum for the Chochos. We do not understand how the Chochos have so small a finger-reach index; with the greatest shoulder width index and next to the maximum arm index they ought to be close to the maximum. We suspect some error here, but have sought in vain to locate it.

The cephalic index, unquestionably the most quoted datum in anthropology,

TABLE VI. CEPHALIC INDEX

No. of Cases	Tribe	Mean	EXTREMES		Range	Dolichocephalic — 69.9	Sub-dolichocephalic 70.0-74.9	Mesati- cephalic 75.0-79.9	Sub-brachycephalic 80.0-84.9	Supra-brachycephalic 85.0 —
			Max.	Min.						
100	Tzendals.....	76.8	86.4	68.0	18.5	2	25	59	13	1
100	Tzotzils.....	76.9	82.7	68.5	14.3	1	19	65	15	0
100	Otomis.....	77.6	85.1	69.5	15.7	1	18	63	17	1
100	Aztecs.....	78.9	86.5	69.0	17.6	1	5	56	35	2
100	Tarascons.....	79.4	88.3	71.3	17.1	0	7	53	32	8
100	Zoques.....	80.2	89.5	69.4	20.2	1	5	47	35	12
99	Triquis.....	80.3	92.4	72.6	19.9	0	6	40	37	16
100	Tlaxcalans.....	80.5	87.2	70.9	16.4	0	2	42	50	6
100	Chochos.....	80.5	93.6	74.0	19.7	0	3	46	42	9
100	Chols.....	80.8	95.7	72.4	23.4	0	5	37	48	10
100	Zapotecs (Mitla).....	81.0	89.2	73.5	15.8	0	3	33	51	13
99	Zapotecs (Teh.).....	81.1	89.5	73.3	16.3	0	4	32	51	12
100	Cuicatecs.....	81.3	90.1	72.5	17.7	0	4	31	44	21
100	Mixes.....	81.8	97.5	71.7	25.9	0	7	27	48	18
100	Mixtecs.....	81.9	96.1	74.5	21.7	0	2	30	46	22
80	Chontals.....	83.2	93.5	75.6	18.0	0	0	14	43	23
100	Mazatecs.....	83.2	93.9	74.8	19.2	0	1	21	46	32
100	Chinantecs.....	83.7	96.4	74.0	22.5	0	2	17	45	36
100	Tepehuas.....	84.0	92.4	75.2	17.3	0	0	9	52	39
100	Huastecs.....	84.4	95.7	75.7	20.1	0	0	10	45	45
100	Juaves.....	84.5	93.7	74.3	19.5	0	1	17	36	46
100	Mayas.....	85.0	94.6	75.2	19.5	0	0	10	42	48
100	Totonacs.....	85.9	95.8	76.5	19.4	0	0	8	31	61

ranges in these tribes from 76.8 to 85.9. Adopting Topinard's nomenclature, we find no dolichocephalic or sub-dolichocephalic tribes, five mesaticephalic, seventeen sub-brachycephalic, and one supra-brachycephalic. Here we have no lack of material from other parts of the country for comparison, as cephalic indices of North American Indians have been published by many observers. Deniker may profitably be consulted. The Eskimo of the far North and the Botocudo of Brazil are true dolichocephals; the Indians of the United States are mostly sub-dolichocephalic and mesaticephalic; among some of the southern tribes the index rises. Our series, however, probably give the highest indices recorded, and the Mayas and Totonacs no doubt are the most brachycephalic of North American tribes. It will be noticed that there is no

TABLE VII. FACIAL INDEX

No. of Cases	Tribe	Mean	EXTREMES		Range	No. of Cases	Tribe	Mean	EXTREMES		Range
			Max.	Min.					Max.	Min.	
100	Aztecs .....	77.0	86.5	67.5	19.1	100	Mixes .....	80.8	94.1	70.1	24.1
99	Tlaxcalans .....	78.0	91.3	68.7	22.7	100	Zapotecs (Mitla) ..	80.8	89.5	68.3	21.3
100	Tarascans .....	78.1	87.9	69.3	18.7	99	Triquis .....	80.8	92.3	66.3	26.1
99	Zapotecs (Teh.) ..	78.7	88.0	70.5	17.6	100	Otomis .....	81.0	92.3	71.7	20.7
100	Huastecs .....	79.1	96.7	72.6	24.2	100	Totonacs .....	81.4	94.7	73.8	21.0
100	Cuicatecs .....	79.3	96.8	68.9	28.0	99	Juaves .....	81.5	92.5	74.3	18.3
100	Chochos .....	79.8	95.7	69.5	26.3	100	Tzendals .....	81.6	94.5	65.6	29.0
100	Zoques .....	79.9	92.2	69.5	22.8	100	Mazatecs .....	81.7	93.0	72.2	20.9
80	Chontals .....	79.9	93.7	70.4	23.4	100	Tepehuas .....	82.1	93.5	73.1	20.5
100	Mixtecs .....	80.0	92.0	70.0	22.1	100	Chinantecs .....	82.2	94.2	73.3	21.0
100	Chols .....	80.4	90.7	71.2	19.6	100	Mayas .....	83.4	95.0	59.6	35.5
100	Tzotzils .....	80.6	93.4	69.0	24.5						

TABLE VIII. FACIAL INDEX (b)

No. of Cases	Tribe	Median	EXTREMES		Range	No. of Cases	Tribe	Median	EXTREMES		Range
			Max.	Min.					Max.	Min.	
100	Aztecs . . . .	119.5	135.5	98.4	37.2	100	Juaves . . . .	124.9	139.4	107.0	32.5
100	Tlaxcalans . .	120.5	138.0	103.8	34.3	100	Huastecs . . .	125.1	147.5	115.5	32.1
100	Tarascans . .	121.1	135.2	103.1	32.2	100	Tepehuas . . .	125.4	150.8	103.6	47.3
100	Mixes . . . .	122.9	138.4	110.5	28.0	100	Chochos . . . .	125.5	141.7	113.5	28.3
100	Zoques . . . .	123.2	137.5	109.0	28.6	100	Totonacs . . .	125.6	138.8	114.0	24.9
100	Otomis . . . .	123.5	138.4	108.3	30.2	100	Chinantecs . .	125.7	146.2	106.9	39.4
100	Cuicatecs . .	123.8	138.3	104.0	34.4	100	Mixtecs . . . .	125.7	143.5	108.6	35.0
99	Zapotecs (T.)	124.1	137.3	106.8	30.6	100	Mazatecs . . .	125.9	143.2	105.6	37.7
100	Zapotecs (M.)	124.3	139.0	108.6	30.5	100	Tzendals . . .	125.9	144.4	104.9	39.6
100	Tzotzils . . .	124.7	144.4	107.5	37.0	99	Triquis . . . .	126.6	143.5	105.7	37.9
80	Chontals . . .	124.7	138.4	108.1	30.4	100	Mayas . . . . .	130.4	147.1	111.5	35.7
100	Chols . . . .	124.9	140.5	108.8	31.8						

agreement in this respect between tribes of the same linguistic family. Mayas and Huastecs stand near the upper end, while Tzendals and Tzotzils, their linguistic relatives, are at the lower end.

We shall make no comments regarding the facial indices. The first is found by taking the height, from hair-line to chin, at 100, and computing the proportion of the maximum — bizygomatic — breadth. In the second the height, from the nasion to the chin, is taken at 100 and compared with the same breadth.

TABLE IX. NASAL INDEX

No. of Cases	Tribe	Mean	EXTREMES		Range	Lepto-rhinian 70.0—74.9	Meso-rhinian 75.0—84.9	Platy-rhinian 85.0—
			Max.	Min.				
100	Juaves .....	76.0	100.0	62.2	37.9	20	71	9
100	Chols .....	76.4	106.9	58.6	48.4	22	64	14
80	Chontals .....	77.2	94.0	61.5	32.6	8	61	11
100	Zoques .....	77.4	95.3	61.1	34.2	16	69	15
100	Mayas .....	77.5	93.0	63.3	29.8	12	73	15
100	Huastecs .....	78.3	102.5	57.1	45.5	9	73	18
100	Mixes .....	78.8	102.3	56.4	46.0	12	70	18
100	Totonacs .....	79.1	97.7	60.7	37.1	7	72	21
100	Chinantecs .....	79.6	97.8	59.3	33.6	9	63	23
99	Zapotecs (Teh.) .....	80.0	102.1	64.2	38.0	9	65	25
100	Quicatecs .....	80.2	100.0	65.4	34.7	5	70	25
100	Aztecs .....	80.5	104.8	61.1	43.3	6	72	22
100	Tepihuas .....	80.7	97.7	63.0	34.8	3	72	25
100	Mazatecs .....	80.8	102.0	61.4	40.7	6	61	33
100	Tlaxcalans .....	81.6	109.3	63.3	46.1	9	53	35
100	Zapotecs (Mitla) .....	81.9	102.3	65.3	37.1	3	64	33
100	Tarascons .....	82.6	102.4	67.7	34.8	4	60	36
100	Chochos .....	82.6	102.3	60.0	42.4	4	62	34
100	Mixtecs .....	83.1	97.9	67.2	30.8	7	65	23
100	Otomis .....	83.1	104.5	66.0	38.6	4	55	41
100	Tzendals .....	83.8	102.2	64.1	38.2	4	51	45
100	Tzotzils .....	84.8	104.5	63.4	41.2	6	43	51
99	Triquis .....	86.5	107.5	67.2	40.4	3	37	59

The nasal index is of the greatest interest. The actual form of the nose among these tribes varies greatly, as will be evident from study of the tribal descriptions. Many of the tribes have finely aquiline noses, which range from the large, prominent, and relatively thin nose of the Juaves, to the small, flat, and broad nose of the Triquis. None of the tribes is leptorhinian, and only among the Juaves and the Chols do we find as many as one-fifth of the individual cases in that category. On the other hand, only one single mean index places its tribe—the Triquis—among the platyrhinians, and only fifty-nine out of the ninety-nine subjects are so. The rest of the tribes are mesorhinian. Deniker gives the nasal indices of but few American tribes, and those





FIG. 1. OTOMI: HUIXQUILUKAN, STATE OF MEXICO

are all mesorhinian. Boas's Shoshoneans at 83.1 coincide with the Mixtecs, and come between the Chochos and Otomis.

We now turn to the data relative to each tribe: the tribes are taken up in the order in which they were visited, and in which they are numbered upon the sketch-map.

### THE OTOMIS

The Otomis are of little stature, only one subject deserving the characterization "tall;" they are mesaticephalic, and have absolutely the longest heads of all the tribes visited; the nasal index, at 83.6, marks them as mesorhinian, although many individual cases are platyrhinian; the shoulder-width index is the least observed.

To the eye there appear to be two well-marked types of males. The first is taller, lighter, broader-nosed than the other, and has eyes that are widely separated and often oblique. The broad nose may be wide and flat at the tip, or it may be what we have designated "beaked"—with the ridge extending down beyond the alæ as a central, hooked, body, from which the alæ open out rather broadly. While the nose is wide and low, it is often aquiline; at the root it is flat-convex or squarish. The beard on the upper cheeks is scanty, lacking altogether on the lower cheeks, is scanty on the chin, and medium on the upper lip. As is frequently the case among Mexican



FIG. 2. OTOMI WOMAN: HUIXQUILUKAN, STATE OF MEXICO

TABLE X. OTOMIS

	MEN (100)			WOMEN (28)		
	Mean	Max.	Min.	Mean	Max.	Min.
Stature .....	1,579.7	1,718	1,421	1,455.7	1,528	1,324
Height of shoulder .....	1,315.2	1,438	1,165	1,202.3	1,278	1,079
Tip of second finger .....	602.2	681	527	550.8	612	486
Finger-reach .....	1,629.0	1,776	1,419	1,481.4	1,559	1,351
Height, sitting .....	819.7	896	752	774.1	827	698
Width of shoulders .....	338.3	380	303	322.7	355	296
Length of head .....	189.7	203	180	181.7	190	173
Breadth of head .....	147.2	160	136	144.6	152	132
Height of face (a) .....	176.1	196	154	164.2	178	141
Height of face (b) .....	114.1	124	104	105.8	115	90
Breadth of face .....	140.7	150	130	135.1	144	127
Height of nose .....	50.0	58	43	43.6	50	38
Breadth of nose .....	41.6	48	34	38.4	46	32
Length of ear .....	64.1	76	53	60.1	67	54
Arm index .....	45.0	49.6	40.8	44.7	47.8	41.9
Finger-reach index .....	103.0	110.1	97.3	101.7	105.3	96.7
Sitting-height index .....	51.8	56.9	47.9	53.1	56.9	50.9
Shoulder index .....	21.5	24.6	19.4	22.1	23.7	20.2
Cephalic index .....	77.6	85.1	69.5	79.0	86.2	69.7
Facial index (a) .....	81.0	92.3	71.7	78.3	86.4	68.1
Facial index (b) .....	123.5	138.4	108.3	127.6	139.8	119.1
Nasal index .....	83.1	104.5	66.0	88.2	117.9	73.9



FIG. 3. TARASCAN (YOUNG TYPE): SANTA FE DE LA LAGUNA, STATE OF MICHOACAN

tribes, the beard among the Otomis shows greater variation in form or texture, in color, and in turning gray, than the hair of the head. Both, however, show much variation: in more than 30 per cent. of the subjects the beard varies from the normal straight and black condition; in something over 20 per cent. of subjects the hair of the head varies. The head is long. The skin is a light yellow or whitish, curiously ruddy, and blotched with red, purple, or blue. The face is flat and broad.—The other type is little, dark brown (16), and has a much more agreeable facial expression; the eyes are less widely-spaced, and the eyebrows often meet; the root of the nose is flat, depressed, and often squarish; the nose is narrower and better-shaped than in the previous type. The individual represented in the cut belongs to this little type.

Women are more uniform, and, on the whole, are darker than the men. They more resemble the second than the first male type. They are little; from yellow-brown to dark brown (16); the face is flat, the nose broad and flat, the cheek-bones wide, and the heads absolutely long. The head-hair grows low upon the forehead, and the forehead itself is frequently grown with a fine black down; the eyebrows often meet. The heads of the women, and of the little men, are peculiarly high—as well as long—though this appearance is increased in men by the mode of cutting the hair. (The hair on the upper third of the head is left uncut while the rest is trimmed.) Eighteen women who had been mothers had had one hundred and twenty-one children.





FIG. 4. TARASCAN GIRL: SANTA FE DE LA LAGUNA, STATE OF MICHOACAN

### THE TARASCANS

The Tarascans are among the taller of these tribes, less than half, forty-nine, being of little stature; only two subjects, however, were tall. Though taller than their neighbors, the Otomis, their heads are shorter. Among the men we may distinguish a well-defined youthful, and an equally definite older, type. In the youthful type, which holds until thirty or thirty-five years, and which *may* persist through life, the skin is of a fine, dark brown (16); the face is large; the nose is broad, with round nostrils, which open to the sides, and which are separated from the face level, behind, by a well-defined ridge of flesh; the eyes are often mongoloid; the lips are thick and protrude somewhat; there is little of the fine, black, forehead down, even in children. — In the older type the face lengthens; the nose becomes narrower; the nostrils face downward, and the ridge of flesh behind them disappears; the eyes straighten.

The hair is straight and black, but two cases showing any degree of graying; one-fourth of the cases show a slight tendency to waviness. The eyes are generally well separated. The beard distribution is remarkably uniform. It is scanty and of moderate length upon the upper cheeks; there is none or little on the lower cheeks, and when there is any it is well forward; on the tip of the chin there is a medium or scanty short growth; the moustache is scanty or medium, and of moderate length.



The ear is well-shaped, and stands off somewhat from the head; the border of the helix is thin and, above, is rolled inward, below is flat; the lobe is rather large, attached, and round-triangular.

Twenty-one women have had one hundred and fifty-two children, of whom one hundred and one have died. Families are quite frequently large; the largest included in this enumeration consisted of thirteen children. Women are frequently fat. Goitre occurs to a considerable extent. In Uruapan only those living in the ward of San Juan are affected. We examined six cases there, of whom three were males and three females. Three of these cases were deaf and two were imbecile; one female examined, who was sixty years of age and unmarried, has two brothers — whom we did not see — of whom one is a deaf-mute, the other is goitrous. At Capácuaro, a quite purely Tarascan town, the disease is common. It seemed as if every man we met was more or less affected; some of the cases were notably developed.

TABLE XI. TARASCAN

	MEN (100)			WOMEN (25)		
	Mean	Max.	Min.	Mean	Max.	Min.
Stature .....	1,600.4	1,718	1,450	1,481.8	1,602	1,381
Height of shoulder.....	1,327.6	1,429	1,203	1,223.9	1,326	1,110
Tip of second finger.....	603.9	660	494	566.2	642	495
Finger-reach.....	1,645.8	1,794	1,525	1,519.9	1,664	1,431
Height, sitting.....	833.5	903	739	790.8	860	727
Width of shoulders.....	351.7	392	319	324.3	351	294
Length of head.....	184.3	199	169	179.5	190	170
Breadth of head.....	146.5	158	138	142.2	149	134
Height of face (a).....	178.2	199	158	169.6	181	154
Height of face (b).....	115.0	128	102	107.8	117	99
Breadth of face.....	139.1	151	128	133.7	143	128
Height of nose.....	48.0	59	41	43.4	48	39
Breadth of nose.....	40.1	46	33	37.0	43	32
Length of ear.....	63.3	74	53	61.4	71	55
Arm index.....	45.1	48.8	39.2	44.3	46.0	42.3
Finger-reach index.....	102.8	108.4	95.5	102.2	108.2	92.1
Sitting-height index.....	52.0	55.4	48.4	53.3	55.8	50.6
Shoulder index.....	21.9	24.4	19.0	21.8	23.6	20.0
Cephalic index.....	79.4	88.3	71.3	79.2	84.3	75.7
Facial index (a).....	78.1	87.9	69.3	78.9	88.5	72.3
Facial index (b).....	121.1	135.2	103.1	124.1	132.0	116.2
Nasal index.....	82.6	102.4	67.7	85.1	95.3	73.0

## THE TLAXCALANS

In stature the Tlaxcalans are only surpassed by the Zapotecs of Tehuantepec and twenty-one out of the hundred are above the mean stature of mankind. The head is well shaped although, frequently, there is a curious bulging of the forehead above the glabella. In skull-form they are intermediate, forty-two subjects being mesaticephalic and fifty sub-brachycephalic. The skin color is a fine dark-brown (16), shading at times toward yellow-brown or red-brown. The hair is black and straight; few



FIG. 5. TLAXCALAN: TLAXCALA, STATE OF TLAXCALA

subjects—only six—were distinctly gray and only one of these was white; seventeen showed a slight tendency to waviness or curliness; middle-aged men rather frequently showed thinning of hair on top of head and some degree of temporal baldness. The beard formula is none (or scanty), none or scanty and well forward on the cheeks, medium (or scanty) on tip and central line of chin; moustache rather full and often of fair length. The beard on the chin is first to turn gray, then that on the lower cheeks: these may be quite gray before the moustache begins to turn; the beard as a whole may be gray or even white, before the hair of the head is sprinkled with gray. While the hair itself is usually straight, the beard hair is often inclined to become curly. The eyes are dark brown, but moderately spaced, and *rarely* mongoloid; there is unusually frequency of lighter brown eyes, 16 per cent. The line of union between the nose and the forehead is rather high and from narrow to medium; the root of the nose is little depressed; the nose itself is aquiline, frequently; the beaked nose, already described, is rather common. The lips are thin or of medium thickness and are nearly vertical. The ears rarely project to a notable degree from the head, and are, often, quite close to the head; they are round; the upper border of the helix is thin and rolled in; the lower part of the border is flat and of medium thickness; the lobe is of fair size, round, and attached.

Women present little that calls for comment. Their eyes, like those of the men,



FIG. 6. AZTEC: CUAUHTLANTZINCO, STATE OF PUEBLA

TABLE XII. TLAXCALANS

	MEN (100)			WOMEN (25)		
	Mean	Max.	Min.	Mean	Max.	Min.
Stature .....	1,603.4	1,787	1,493	1,483.6	1,571	1,413
Height of shoulder .....	1,329.5	1,503	1,223	1,225.2	1,276	1,168
Tip of second finger.....	600.7	696	519	563.9	610	527
Finger-reach .....	1,656.0	1,977	1,538	1,507.0	1,612	1,400
Height, sitting .....	845.5	910	774	789.5	839	722
Width of shoulders .....	350.6	400	309	323.5	353	299
Length of head.....	185.2	210	175	179.3	187	172
Breadth of head .....	149.1	163	137	143.5	153	135
Height of face (a).....	179.7	205	161	168.4	184	151
Height of face (b).....	116.3	129	105	108.5	118	102
Breadth of face.....	140.1	154	125	130.5	139	123
Height of nose.....	49.4	60	43	43.8	51	39
Breadth of nose .....	40.1	47	34	35.6	39	32
Length of ear.....	65.1	75	56	59.8	68	54
Arm index .....	45.4	50.3	40.8	44.5	47.9	42.5
Finger-reach index .....	103.2	110.6	95.8	101.6	108.4	94.6
Sitting-height index .....	52.7	55.1	49.4	53.2	55.0	50.8
Shoulder index.....	21.8	24.5	19.6	21.7	23.8	20.3
Cephalic index .....	80.5	87.2	70.9	79.9	84.5	75.4
Facial index (a).....	78.0	91.3	68.7	77.2	83.7	68.4
Facial index (b).....	120.5	138.0	103.8	120.3	131.0	107.8
Nasal index .....	81.6	109.3	63.3	81.3	90.4	68.6

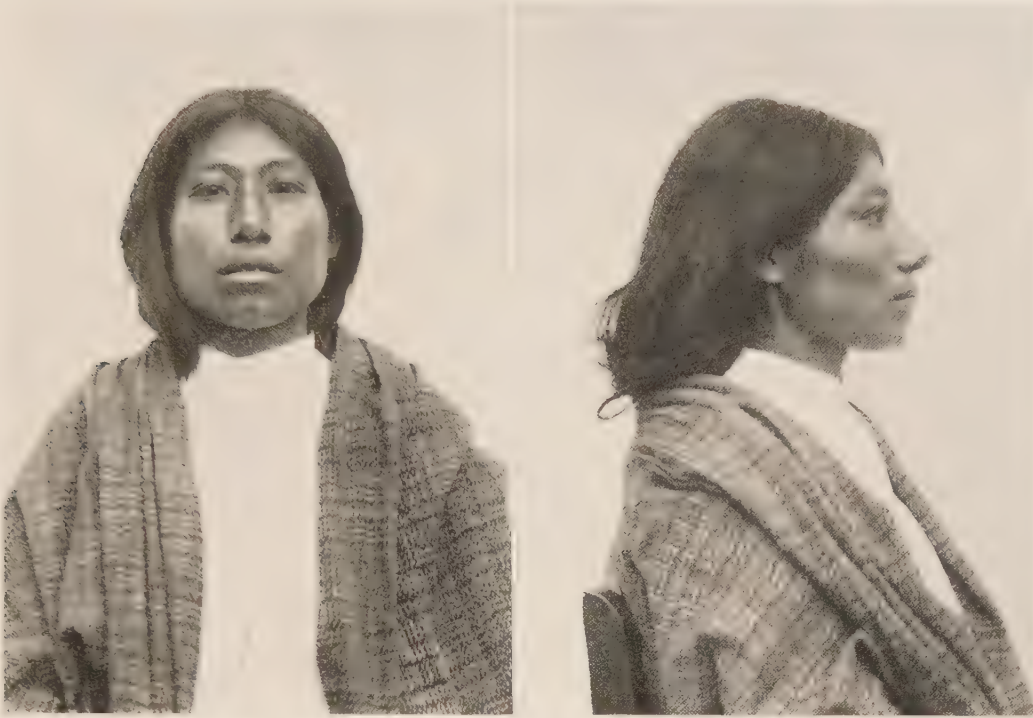


FIG. 7. AZTEC WOMAN: CUAUHTLANTZINCO, STATE OF PUEBLA

are rather often brown, and not almost black; this occurred in 20 per cent. of cases. Nineteen mothers had borne one hundred and sixteen children, of whom just half had died. The largest family in the series was of eighteen children. Two women were barren.

### THE AZTECS

The Aztecs examined were, unfortunately, from close by Tlaxcala. Cuauhtlantzinco is a "made town," of post-conquest origin. Its population was drawn from Cholula and Tlaxcala. There should then be little difference between our Tlaxcalan and Aztec series; real differences would point to a true Aztec type, lying on the other side of the observation from the Tlaxcalan.

	Stature	Arm	Finger-reach	Sitting-height	Shoulder	Cephalic	Facial	(b)	Nasal
Aztec	1590.2	45.7	103.6	51.8	21.9	80.5	77.	119.5	80.5
Tlaxcala	1603.4	45.4	103.2	52.7	21.8	78.9	78.	120.5	81.6

The significant variations are in stature, sitting-height index, cephalic index, and nasal index. The Tlaxcalans are taller, more dolichocephalic, and broader-nosed than the Cholultec-Tlaxcalans of Cuauhtlantzinco. Presumably a purer Aztec type would be shorter, more brachycephalic, and narrower-nosed.

The same remarks concerning hair—color, form, and distribution—already made regarding Tlaxcalans apply to the Aztecs. Fifteen per cent. of eyes among men were



lighter than normal, 8 per cent. among women. One case of strabismus and one of cataract occurred among the hundred subjects. The line of union between the nose and forehead was high and of medium breadth: the tip of the nose was rather thick. The lips were often thick and somewhat projecting. Ears rarely project notably, but the lower part of the ear often stands off somewhat. The helix border is thin and rolled-in above, thick and flat below; the lobe is rather large, attached, and round—tending to square or triangular.

To twenty-four mothers one hundred and forty children were born, of whom only sixty had survived; one woman was barren. Three women out of the twenty-five were stout.

TABLE XIII. AZTECS

	MEN (100)			WOMEN (25)		
	Mean	Max.	Min.	Mean	Max.	Min.
Stature .....	1,590.2	1,776	1,465	1,461.8	1,527	1,339
Height of shoulder.....	1,318.8	1,498	1,209	1,211.8	1,271	1,118
Tip of second finger....	591.3	696	508	558.7	601	495
Finger-reach .....	1,648.9	1,797	1,485	1,503.2	1,587	1,363
Height, sitting.....	825.8	887	754	762.2	824	704
Width of shoulders.....	350.0	390	304	325.1	357	299
Length of head.....	185.7	200	174	179.1	185	171
Breadth of head.....	146.5	158	134	142.8	156	133
Height of face ( <i>a</i> ).....	179.5	200	162	171.0	187	159
Height of face ( <i>b</i> ).....	115.6	133	101	107.0	119	98
Breadth of face.....	138.1	151	124	131.9	145	123
Height of nose.....	50.0	60	41	45.4	54	39
Breadth of nose.....	40.0	47	33	36.4	43	34
Length of ear.....	63.9	77	54	61.0	67	55
Arm index .....	45.7	52.5	43.3	44.6	47.4	41.0
Finger-reach index .....	103.5	110.2	98.7	102.4	107.1	90.1
Sitting-height index....	51.8	55.4	47.5	52.1	55.0	50.2
Shoulder index.....	21.9	24.7	19.6	22.1	24.1	20.1
Cephalic index.....	78.9	86.5	69.0	79.4	87.7	72.2
Facial index ( <i>a</i> ).....	77.0	86.5	67.5	76.7	83.6	70.0
Facial index ( <i>b</i> ).....	119.5	135.5	98.4	122.5	134.2	110.0
Nasal index .....	80.5	104.8	61.1	80.0	95.5	68.0

## THE MIXTECS

The Mixtecs are of little stature, mesati- to sub-brachycephalic and mesorhinian. The hair is straight, black, and abundant. Five cases were gray; thirteen were sprinkled with gray; one was brown; nine showed a tendency to waviness and six to curliness. The forehead is high, but the apparent height is frequently due, in part, to forward baldness. The beard was gray in twelve cases, sprinkled with gray in eleven, and relatively light-colored in three. The distribution of the beard was: none to scanty, none or scanty to medium, medium; medium to full. The beard on the chin was often confined to the very tip. There were sixteen subjects with brown eyes; obliquity of the eyes, in any degree, was observed but six times. The line of union



FIG. 8. MIXTEC: YODOCONO, STATE OF OAXACA

TABLE XIV. MIXTECS

	MEN (100)			WOMEN (25)		
	Mean	Max.	Min.	Mean	Max.	Min.
Stature .....	1,561.3	1,755	1,421	1,467.9	1,580	1,367
Height of shoulder .....	1,291.0	1,345	1,179	1,206.6	1,301	1,131
Tip of second finger .....	586.8	658	526	543.5	594	493
Finger-reach .....	1,595.2	1,790	1,342	1,493.5	1,588	1,403
Height, sitting .....	815.7	895	732	774.2	853	716
Width of shoulders .....	353.7	388	318	329.5	359	298
Length of head .....	182.5	196	156	179.5	190	171
Breadth of head .....	149.4	162	135	143.9	155	135
Height of face (a) .....	178.4	200	157	164.0	180	139
Height of face (b) .....	113.5	127	101	105.3	118	93
Breadth of face .....	142.5	154	130	135.7	142	128
Height of nose .....	49.9	59	41	44.9	50	40
Breadth of nose .....	40.6	48	35	37.1	43	34
Length of ear .....	63.9	75	57	61.3	75	56
Arm index .....	44.8	47.7	38.0	45.1	47.7	43.0
Finger-reach index .....	102.1	108.0	94.4	101.7	106.2	97.2
Sitting-height index .....	52.2	56.9	49.0	52.7	58.9	49.5
Shoulder index .....	22.6	24.6	20.4	22.4	23.6	20.7
Cephalic index .....	81.9	96.1	74.5	80.2	85.9	75.5
Facial index (a) .....	80.0	92.0	70.0	82.8	97.1	73.3
Facial index (b) .....	125.7	143.5	108.6	129.3	148.3	114.4
Nasal index .....	83.1	97.9	67.2	82.7	97.6	65.9



FIG. 9. TRIQUI: CHICAHUAXTLA, STATE OF OAXACA

between the nose and the forehead varies from high to medium and is of medium width; while the nose is frequently aquiline, the tip is wide and flat. The lips are moderately thick and project somewhat. The ears are round and close to the head, though they tend to stand off considerably below. The helix border is thin and slightly turned in above, rather thick and flat below; the lobe is large, round, and attached. The face is often absolutely large and is broad and heavy below. The color of the skin is dark brown — from 13 to 16.

In women there is, quite often, a growth of fine, black down upon the forehead. Twenty-two women had had one hundred and twenty-two children, of whom seventy-seven still lived. Two women were unmarried and one was barren.

### THE TRIQUIS

The Triquis present one of the best-marked types of Southern Mexico. They are next to the shortest among the tribes examined, are mesati- to sub-brachycephalic, and have the highest nasal index observed—86.5. They are well built and finely muscled. The hair is black and straight, only fifteen persons showing graying or light color and but five showing any tendency to waviness or curling. The beard appears late, men of thirty often having almost none. On the upper cheeks there is none or scanty, on



FIG. 10. TRIQUI WOMAN: CHICAHUAXTLA, STATE OF OAXACA

TABLE XV. TRIQUIS

	MEN (99)			WOMEN (25)		
	Mean	Max.	Min.	Mean	Max.	Min.
Stature .....	1,551.4	1,679	1,351	1,425.3	1,557	1,316
Height of shoulder.....	1,281.2	1,429	1,097	1,172.3	1,284	1,083
Tip of second finger.....	578.6	656	466	535.6	675	451
Finger-reach.....	1,592.4	1,728	1,434	1,464.0	1,597	1,325
Height, sitting.....	802.1	881	691	756.4	834	692
Width of shoulders.....	355.7	403	312	319.9	341	291
Length of head.....	183.6	198	163	179.4	199	164
Breadth of head.....	147.5	167	135	142.0	155	135
Height of face (a).....	172.5	197	154	162.9	179	150
Height of face (b).....	110.1	129	97	104.1	112	94
Breadth of face.....	140.6	151	128	132.5	144	125
Height of nose.....	47.7	58	40	42.8	49	36
Breadth of nose.....	41.1	49	33	38.3	44	34
Length of ear.....	62.0	73	54	58.2	64	47
Arm index.....	45.2	46.7	40.2	44.6	47.8	37.9
Finger-reach index.....	102.6	108.0	97.3	101.8	106.5	88.7
Sitting-height index.....	52.1	56.1	48.6	53.0	55.4	48.9
Shoulder index.....	22.8	25.3	20.7	22.4	24.5	20.4
Cephalic index.....	80.3	92.4	72.6	79.2	89.6	71.3
Facial index (a).....	80.8	92.3	66.3	81.4	88.1	73.1
Facial index (b).....	126.6	143.5	105.7	127.5	137.2	116.9
Nasal index.....	86.5	107.5	67.2	89.7	110.2	76.6





FIG. 11. ZAPOTEC: TLACOLULA, STATE OF OAXACA

the lower cheeks none in seventy-one cases, on the chin it is scanty to medium; the moustache is of medium growth. The eyes are dark brown and are truly mongoloid in one-half the subjects. The nose varies little; it is finely aquiline, but is low and, at the tip, flat and wide; the line of junction with the forehead is rather high. The lips are frequently thick, but do not project much, as the thickness is largely vertical. The forehead is quite high, and in women is likely to be covered with fine black down. The legs of men are apt to be notably hairy. The skin is dark brown (16), and is smooth and soft. The oblique eyes and some degree of projection of the lips are more marked in young than in older subjects. The round ears are quite closely set to the head: the border of the helix above is thin and rolled in or flat, below it is flat and thick to thin; the lobe is relatively large, attached, and round—varying to square or triangular.

In women the nose is less frequently aquiline and is often short and fat at the tip. The lips are thick and, often, project. Prognathism, in part due to large front teeth, appears rather commonly among them. Twenty-two mothers had borne one hundred and eleven children, of whom sixty-five have died. One woman was barren.

The hair rarely turns gray or grows thin before the age of fifty years. Old persons appear fairly preserved. This is the more surprising as the tribe is terribly



FIG. 12. ZAPOTEC WOMAN: MITLA, STATE OF OAXACA

addicted to drunkenness. We incline to attribute this abuse of intoxicants to climatic conditions. Cold and heavy fogs sweep up the mountains from the coast daily and their chill penetrates to the very bone. Wherever, in the high mountains, fogs are abundant and precipitation occurs almost constantly, we find the same conditions. The Mixes and the Chinantecs, in their magnificent, forest-clad, abundantly watered mountains, are almost equally addicted to drink.

### THE ZAPOTEC

The population of Mitla is ordinarily considered Mixtec-Zapotec, rather than truly Zapotec. If the Zapotecs of Tehuantepec are typical, these of Mitla certainly occupy an intermediate position between them and the Mixtecs. The type is not well defined. The average stature, 1586.4, places them in the category of "little statures;" the finger-reach is rather low; the cephalic index is sub-brachycephalic; the nose is mesorhinian. The hair is black, but it varies in form toward wavy or curly in one case out of four. There is no beard on the upper cheeks in 60 per cent., none on the lower in 69 per cent., of cases; there is a medium beard growth on the tip of the chin; the moustache is heavier at the ends, being short and scanty at the middle. After forty years the beard growth is heavier, but merely emphasizes this distribution.

In twenty subjects the eyes were brown instead of dark brown. Oblique eyes are uncommon; only six cases presented any degree of obliquity. The nose is large, but is seldom aquiline; rather, the bridge is long and straight or slightly sinuous; the line of junction with the forehead is from high to medium. Lips are of moderate thickness, and project but little. Ears are round, and vary much in their relation to the head; the upper border of the helix is thin and rolled in, the lower border is flat and varies from thick to thin; the lobe is large, attached, and round to triangular. Cheek-bones are, not rarely, prominent, and broad lower faces are common. One case of cataract was observed.

The male subject illustrated on the preceding page (Fig. 11, p. 26) was exhibited at the eleventh session of the Congress of Americanists as a type, reproducing, as it does, in many ways that shown in ancient works of art. He is hardly a good example of the type, as we have defined it, as his aquiline nose and rather heavy beard are exceptional.

The women of the tribe present no special features for detailed comment. Twenty mothers had borne one hundred and twenty-five children, of whom fifty-eight were still living. Two women were unmarried, and one was childless. These Zapotec women present a notable frankness and gayety, as compared with the women in the preceding tribes, and are only equaled (and surpassed) in this regard by their sisters in the Tehuantepec district.

TABLE XVI. ZAPOTECES

	MEN (100)			WOMEN (25)		
	Mean	Max.	Min.	Mean	Max.	Min.
Stature .....	1,586.4	1,772	1,432	1,474.9	1,570	1,403
Height of shoulder .....	1,310.2	1,494	1,195	1,212.0	1,329	1,131
Tip of second finger.....	593.0	705	512	557.0	628	505
Finger-reach .....	1,623.8	1,788	1,451	1,505.0	1,661	1,380
Height, sitting.....	830.5	910	740	782.8	853	722
Width of shoulders .....	352.6	392	318	330.2	358	296
Length of head.....	183.5	200	171	175.8	182	166
Breadth of head.....	148.7	167	138	144.3	158	134
Height of face ( <i>a</i> ).....	177.6	202	157	169.7	188	146
Height of face ( <i>b</i> ).....	113.5	127	100	106.8	123	100
Breadth of face.....	141.0	155	125	134.8	144	127
Height of nose.....	49.3	57	41	45.3	50	41
Breadth of nose .....	40.3	50	33	36.8	45	30
Length of ear.....	62.5	74	49	58.5	70	53
Arm index .....	45.1	47.9	40.5	44.3	48.3	39.1
Finger-reach index .....	102.3	107.4	96.6	101.9	108.1	96.9
Sitting-height index .....	52.3	55.9	47.8	53.0	55.8	50.6
Shoulder index.....	22.1	24.3	19.9	22.3	24.3	20.5
Cephalic index .....	81.0	89.2	73.5	82.0	89.1	75.7
Facial index ( <i>a</i> ).....	80.8	89.5	68.3	79.6	91.0	71.2
Facial index ( <i>b</i> ).....	124.3	139.0	108.6	126.5	134.3	107.3
Nasal index .....	81.9	102.3	65.3	81.2	95.2	66.6



FIG. 13. MIXE: COATLAN, STATE OF OAXACA

## THE MIXES

The Mixes are of little stature, and are exceptionally strongly built; their muscles are well developed, and their men are famous as carriers; the chest development is good. The arms are the shortest observed (44.6), but their finger-reach (103.3) is fairly high. The hair is black and straight: there were fifteen cases of gray, or gray-sprinkled hair, and sixteen with a tendency to wavy and curly. Twelve subjects had really gray, and nine gray-sprinkled beards; there were eight cases of black-brown, brown, or red-brown beards. The beard on the upper cheeks is scanty, on the lower cheeks there is none or it is scanty, on the chin it is medium or scanty; the moustache is medium. The moustache appears first, the chin beard next; when—as is common in older subjects—there is a medium, or even full, growth on the upper and lower cheeks, there is a clear space between. The eyes are dark brown, with 8 per cent. of lighter occurrences: they are rarely oblique—in about 5 per cent.; they are widely separated. The line of union of the nose and forehead is high and of medium width; the nose is fat, flat, and broad, with nostrils somewhat transversely spread. The mouth is large and lips are thick and projecting; the mouth is rarely kept closed. Prognathism is common. The lines from the sides of the nose to the ends of the lips are deeply creased. Ears are often irregular and are usually close to the head; the



upper helix border is rolled in and thin, while the lower border is flat and thick; the lobe is large, attached, and round. The face is low and is broad across the cheeks. The skin is dark brown, (13) being most common and (16) next.

The female type was noted as "wide face above; lower face wide; nose broad and flat; nostrils nearly circular and close to the face." This description applies as well to the youthful male type. To twenty-three mothers, one hundred and sixty children were born, of whom eighty-four still lived; the largest family contained sixteen children.

The occurrence of erythrism at Ixcuintepéc is famous through the Mixe country. In one family are several redheads; we saw two males of this family. The hair was a rich and handsome blackish red—in the shade, in a dull light, it would pass for black; in good light the red was evident. Among our hundred males four had cataract (one, an old man, had both eyes affected). One woman was goitrous. Goitre is not infrequent in this region of fine mountain brooks. At Camotlan, with a population of 143 persons, there were six cases of goitre—four females and two males; there were three deaf-mutes, who were *not* children of goitrous parents; and there was one case of congenital deformation, with no legs and with deformed arms and hands. Our measurements, taken at Ajutla, Juquila, Ixcuintepéc, and Coatlan, no doubt represent the type adequately, but we regret that the work was not done at Ocotepec, where the people appear to be exceptionally pure and the type finely marked.

TABLE XVII. MIXES

	MEN (100)			WOMEN (25)		
	Mean	Max.	Min.	Mean	Max.	Min.
Stature .....	1,574.4	1,714	1,553	1,458.4	1,648	1,326
Height of shoulder .....	1,302.2	1,423	1,195	1,199.2	1,346	1,073
Tip of second finger.....	583.8	663	520	538.2	617	454
Finger-reach .....	1,628.1	1,809	1,456	1,478.9	1,712	1,385
Sitting height .....	822.4	905	752	774.0	855	681
Width of shoulders.....	357.4	422	309	322.9	365	288
Length of head.....	184.5	200	165	178.3	188	165
Breadth of head.....	150.7	166	140	142.9	153	132
Height of face (a).....	177.0	200	154	167.0	184	152
Height of face (b).....	116.8	131	103	105.6	117	93
Breadth of face.....	143.5	155	132	133.3	143	118
Height of nose.....	49.7	62	41	44.4	49	37
Breadth of nose .....	39.0	48	31	34.9	40	30
Ear length .....	62.2	79	50	60.6	73	49
Arm index .....	44.6	48.7	40.6	44.7	46.6	42.4
Finger-reach index .....	103.3	108.6	99.9	101.3	105.9	97.1
Sitting-height index.....	52.1	54.8	48.3	53.0	55.6	49.8
Shoulder index.....	22.6	25.8	20.7	22.1	24.4	20.6
Cephalic index .....	81.8	97.5	71.7	80.1	87.2	74.1
Facial index (a).....	80.8	94.1	70.1	79.9	88.1	71.8
Facial index (b).....	122.9	138.4	110.5	126.4	144.0	111.9
Nasal index .....	78.8	102.3	56.4	79.0	100.0	66.6



FIG. 14. TEHUANTEPEC ZAPOTEC: SAN BLAS, STATE OF OAXACA

### THE ZAPOTECs OF TEHUANTEPEC

The Zapotecs of Tehuantepec probably present the finest Zapotec type, although they probably have some admixture of Spanish blood. They are the tallest tribe visited, having a mean stature of 1605; in cephalic index they are close to the Mixtec-Zapotecs of Mitla; they are mesorhinian. The hair was gray, or turning to gray, in seventeen cases, and was brown in three; the usual formula—"black, straight"—fails in 43 per cent. of cases. The distribution of beard is much as usual: less than half had any beard on the upper cheeks, three-fourths had none on the lower cheeks, forty-six had a medium, and thirty-six a scanty, growth on the chin, while three-fourths had a medium moustache growth; 37 per cent. of the subjects have light or gray beard. Eyes are usually dark brown, but there were seventeen cases of brown, light brown, or gray; few are oblique in any degree. The line of union between the nose and forehead is from high to medium and rather narrow; though the nose is long and high, it is often flat and thick at the end. The lips vary from medium to thick and project somewhat. The ears are, rather frequently, irregular, and project from the head; the edge of the helix is thin and rolled in above, thick (or thin) and flat below; the lobe is large, attached, and variable in form. A certain narrow, large-featured, hatchet face is rather common, and is represented in the cut. The skin color

TABLE XVIII. ZAPOTEC (TEHUANTEPECANOS)

	MEN (99)			WOMEN (25)		
	Mean	Max.	Min.	Mean	Max.	Min.
Stature .....	1,605.0	1,730	1,476	1,509.4	1,630	1,403
Height of shoulder.....	1,325.2	1,448	1,220	1,245.8	1,349	1,157
Tip of second finger.....	589.7	683	520	569.5	630	530
Finger-reach.....	1,666.9	1,826	1,454	1,540.1	1,729	1,415
Height, sitting.....	830.0	905	765	793.4	852	754
Width of shoulders.....	361.2	395	314	333.0	362	295
Length of head.....	185.3	199	171	176.6	191	158
Breadth of head.....	150.2	163	139	145.6	155	133
Height of face ( <i>a</i> ).....	181.1	201	160	171.8	191	149
Height of face ( <i>b</i> ).....	114.8	132	99	107.4	116	99
Breadth of face.....	142.4	155	129	136.0	150	125
Height of nose.....	50.2	58	42	44.7	50	40
Breadth of nose.....	40.1	49	34	36.2	42	29
Length of ear.....	63.7	77	52	59.3	64	52
Arm index.....	45.7	49.0	37.9	44.7	47.6	42.0
Finger-reach index.....	103.8	110.2	94.5	101.9	107.8	95.6
Sitting-height index.....	51.6	55.8	48.2	52.6	55.2	49.2
Shoulder index.....	23.0	25.0	20.1	22.0	23.8	19.2
Cephalic index.....	81.1	89.5	73.3	82.5	92.4	76.3
Facial index ( <i>a</i> ).....	78.7	88.0	70.5	79.2	87.9	73.5
Facial index ( <i>b</i> ).....	124.1	137.3	106.8	126.7	140.2	118.9
Nasal index.....	80.0	102.1	64.2	81.0	93.3	63.0

varies, but the commonest tint is (16) and the next is (13), so it may be described as dark brown.

Women give the impression of being larger and better built than the men. This is not actually the case, but the maximum stature of the women is greater than the mean stature of the men. This is true of only four other tribes in the list—Mixes, Mixtecs, Triquis, and Tarascans. In enterprise and vivacity the women are distinctly superior. For personal beauty the Tehuantepec women are famous: all travelers emphasize the fact and some assert that they are the handsomest women in the world. Much of this favorable impression is due to their fine forms, their free and graceful movement, and their straightforward and fearless manner. Women of middle age tend toward stoutness and some cases of real obesity occur.

We have already stated that the Mitla Zapotecs are intermediate between the Tehuantepecanos and the Mixtecs. The accompanying table shows this:

	Stature	Arm	Finger-reach	Sitting	Shoulder	Cephalic	Facial	( <i>b</i> )	Nasal
Mixtecs	1561.3	44.8	102.1	52.2	22.6	81.9	80.0	125.7	83.1
Zapotecs (M.)	1586.4	45.1	102.3	52.3	22.1	81.0	80.8	124.3	81.9
Zapotecs (T.)	1605.0	45.7	103.8	55.8	23.0	81.1	78.7	124.1	80.0

In only three of these nine details do they occupy any but the intermediate place, and in those three the difference between the two Zapotec types is small. Facts, then, bear out the common idea that the people of Mitla are a Mixtec-Zapotec mixture.

## THE JUAVES

These seaside, lagoon-frequenting Indians present a well-marked type. Their average stature falls just short of "below mean;" the cephalic index is just short of supra-brachycephaly; their nasal index, while the least observed, is still mesorhinian. The hair is straight and black; there were nine cases of gray hair, and twenty-eight that were more or less wavy or curly. The beard presents greater variation: there were fifteen cases which were somewhat gray and thirty-two which were brown or black-brown. There was total lack of beard on the upper cheeks in sixty-nine cases, and straggling hairs in twenty-two; there was no beard on the lower cheeks; on the chin the growth varied from medium to scanty, but was confined to the tip and a vertical median line. Out of nine cases that present a medium growth on the upper cheeks, eight were gray or brown; in the few cases where there was a scanty growth on the lower cheeks, all were gray or brown. These facts raise the suspicion of mixture of bloods in cases of notable beard growth. The eyes are dark brown; in the eight cases where brown eyes were observed, the hair or beard was gray, brown, or black-brown, straight-wavy, or straight-curly; the eyes show no tendency to obliquity. The nose is enormous, prominent and aquiline; this is true even in women and boys; among the latter, however, it is lower and somewhat flat. The line at the junction of nose and forehead is high and from narrow to medium; the bridge is often narrow; the tip is rarely thick and is, sometimes, even hooked. The mouth is large, the lips thick,

TABLE XIX. JUAVES

	MEN (100)			WOMEN (25)		
	Mean	Max.	Min.	Mean	Max.	Min.
Stature .....	1,599.6	1,733	1,473	1,463.0	1,537	1,375
Height of shoulder .....	1,322.9	1,451	1,217	1,203.0	1,281	1,103
Tip of second finger .....	592.8	678	535	539.2	599	478
Finger-reach .....	1,644.4	1,775	1,473	1,505.5	1,595	1,383
Sitting height .....	830.9	897	770	782.6	821	739
Width of shoulders .....	354.8	393	314	326.2	351	296
Length of head .....	181.3	199	162	172.3	183	155
Breadth of head .....	153.1	171	140	148.2	164	133
Height of face (a) .....	177.1	200	162	167.5	182	149
Height of face (b) .....	116.2	129	104	106.8	116	94
Breadth of face .....	145.0	160	134	137.4	150	121
Height of nose .....	50.3	58	42	44.7	51	38
Breadth of nose .....	38.1	45	32	35.7	41	30
Ear length .....	64.3	77	55	58.3	64	53
Arm index .....	45.5	48.4	42.4	45.0	47.9	42.3
Finger-reach index .....	102.7	107.2	96.3	102.9	106.8	98.8
Sitting-height index .....	51.8	53.9	49.6	53.4	56.0	51.2
Shoulder index .....	22.3	25.2	20.2	22.2	24.1	20.1
Cephalic index .....	84.5	93.7	74.3	86.0	95.9	76.2
Facial index (a) .....	81.5	92.5	74.3	83.1	91.0	75.2
Facial index (b) .....	124.9	139.4	107.0	130.3	144.9	115.6
Nasal index .....	76.0	100.0	62.2	80.2	93.0	65.2





FIG. 15. JUAVE: SAN MATEO DEL MAR, STATE OF OAXACA

and the upper lip often projects. The cheek-bones are high; the lower face varies and may be broad or narrow. Ears vary little and are not large; the upper part of the ear frequently stands well off from the head—the lower part rarely does; the upper part of the border of the helix folds over, sometimes closely and flattened; the lower part is flat and thin, though the very edge may be thickened and slightly raised; the lobe is large, attached, and triangular. The skin color is commonest at (16), then at (13).

The women show rather more variation than the men; they are lighter in color, there being twice as many at (13) as there are at (16). As regards fecundity, twenty-four women had borne one hundred and fifty-seven children, of whom more than half (eighty-six) were dead. Two women out of twenty-five had cataract of the eyes.

Especial interest attaches to this tribe of Indians. Their manner of life is peculiar; they have a language whose affinity with other Mexican languages is unknown, and they are believed to have come from somewhere farther south—from Central America or South America.

Francisco Belmar has recently published a study of the language of the Juave tribe, and Nicolas Leon has prepared a summary of what has heretofore been written about them.



FIG. 16. JUAVE WOMAN: SAN MATEO DEL MAR, STATE OF OAXACA

### THE CHONTALS

A first glance gives the impression that the Chontals are sadly mixed. Their frequently curly hair, light skin, and light eyes suggest blood mixture. As their chief town lies upon a much-traveled highroad, the possibility of such a mixture is admitted. But if it has taken place the work has been thorough, and the resulting type is quite as uniform as many of those in southern Mexico. Usually the *range* in character and indices is considered indicative of purity or mixture. In our nine general tables the range in stature is the only *maximum* shown by the Chontals; in four indices the range is considerable, though not a maximum; in four the range is less than that of one-half of the tribes, and in two of these (one of them the nasal index) it is relatively small. The type, then, is *not* a bad one. If there is notable mixture, probably negro blood, as well as white, is present. The Chontals, with a stature of 1,598.0 mm., are near the taller end of our tribes; they are sub-brachycephalic; the nasal index is low. The hair is black and straight, but in thirty-five cases out of eighty it showed variation in form and in sixteen out of eighty cases showed variation in color. Ten cases were distinctly curly, while three were brown or dark brown. The beard was gray, or sprinkled with gray, in thirty subjects; it was curly in several. Many subjects had no beard on the upper cheeks, but thirty-one



FIG. 17. CHONTAL: TEQUIXISTLAN, STATE OF OAXACA

TABLE XX. CHONTALS

	MEN (80)			WOMEN (25)		
	Mean	Max.	Min.	Mean	Max.	Min.
Stature .....	1,598.0	1,768	1,391	1,480.6	1,563	1,383
Height of shoulder .....	1,325.0	1,488	1,141	1,218.6	1,305	1,130
Tip of second finger .....	595.2	678	540	548.8	612	483
Finger-reach .....	1,648.6	1,821	1,415	1,503.6	1,609	1,410
Height, sitting .....	825.4	905	728	788.0	857	749
Width of shoulders .....	351.7	386	308	326.4	347	298
Length of head .....	180.3	192	162	176.1	185	177
Breadth of head .....	149.9	160	139	144.5	153	132
Height of face (a) .....	177.6	200	145	170.0	188	155
Height of face (b) .....	113.7	129	102	107.7	115	100
Breadth of face .....	141.7	151	126	137.5	148	124
Height of nose .....	50.5	56	45	46.0	53	40
Breadth of nose .....	39.0	47	32	36.5	44	30
Length of ear .....	62.4	73	55	61.0	77	52
Arm index .....	45.6	51.1	42.6	45.1	48.4	42.7
Finger-reach index .....	103.1	110.0	98.4	101.5	106.5	95.7
Sitting-height index .....	51.6	55.2	47.3	53.1	55.1	50.7
Shoulder index .....	21.9	23.8	19.2	22.0	24.1	20.1
Cephalic index .....	83.2	93.5	75.6	82.0	87.7	76.6
Facial index (a) .....	79.9	93.7	70.4	81.0	87.5	72.0
Facial index (b) .....	124.7	138.4	108.1	127.6	136.2	114.8
Nasal index .....	77.2	94.0	61.5	79.4	91.6	63.2





FIG. 18. CHONTAL WOMAN: TEQUIXISTLAN, STATE OF OAXACA

subjects showed a scanty to medium growth; only a third had any at all on the lower cheeks; more than half had a medium growth upon the chin; five-eighths had a medium and almost all the others a full moustache. This remarkable predominance of the moustache over the rest of the beard appears real, and not the result of shaving. The eyes are dark brown; only seven varied (one of these was blue-gray); they are widely spaced and are horizontal. The nose is large and rather long, often somewhat convex along the ridge; the root is high and narrow, and often presents a broad plateau, pinched up into a narrow ridge just where it joins the forehead. The lips are thin to medium; the upper lip is vertical or slightly projecting. The ear is round, stands off from the head, and is thin and rather open; the upper border of the helix is thin and rolled inward, the lower border is thick to thin and flat; the lobe varies in size and attachment, but is usually round. The color of the skin varies somewhat in individuals, but the commoner shades are represented by (13), (23), and (16) in our color-plate.

Women fairly present the same type. More than one-half of them gave skin color at (13). Their lips are more frequently thick and they are sometimes prognathic. Two of the women whom we examined had never borne children; but twenty-two mothers had given birth to one hundred and thirteen children, of whom sixty-seven had died.





FIG. 19. CUICATEC: PAPALO, STATE OF OAXACA

### THE CUICATECS

The Cuicatecs present less uniformity of type than any other tribe examined. After having examined the whole series of subjects there was no satisfactory type-picture in mind. They are of little stature, sub-brachycephalic (with many mesati-cephalic individuals), and mesorhinian. The hair is black and straight: twelve subjects were somewhat gray, one was brown, and one blackish red; some degree of waviness or curliness was observed in fourteen cases. The common beard formula was: none (or scanty), none, scanty to medium; medium to full; where beard occurred on the cheeks it was well forward. The eyes are dark brown, widely spaced, and horizontal. Two nose forms were rather common; these, notwithstanding their differences, might be combined in one person: (*a*) long, not aquiline, sinuous, with the bridge often curiously broadened in the upper third of its length; (*b*) crest or ridge concave, wide and fat at bottom, with round, quite widely separated, nostrils. With the latter type of nose there was usually associated a fat and broad lower face. Not infrequently, at the root, the nose is pinched up into a narrow ridge upon a wider plateau, which widely separates the eyes. The lips are thick and often project. The ears are rather close to the head; the upper border of the helix is rolled in and thin; the lower border is thicker and flat; the lobe is large, attached, and round (triangular).

The color of the skin is most frequently at (23); after this come (13) and (23-13).

Of all Mexican Indians visited by us these were the least agreeable, the least intelligent, and the most stubborn. We had hoped this bad impression was peculiar to ourselves, but find that they bear much the same reputation among others who have come into contact with them.

In four cases there was some degree of baldness. One cataract was noticed. One subject presented a curious disease affecting the finger nails; these were enormous, thick, and smooth. The subject attributed the condition to his working constantly in cold water. Two other cases were observed, but they were not developed in anything like the same degree.

Eight women were more or less gray, and two presented some curliness of hair; four had brown eyes. The long sinuous nose above described is rather common among them. Twenty-four mothers had borne one hundred and fourteen children, of whom seventy still lived; one woman was unmarried.

TABLE XXI. CUICATECS

	MEN (100)			WOMEN (25)		
	Mean	Max.	Min.	Mean	Max.	Min.
Stature .....	1,562.3	1,736	1,365	1,450.0	1,524	1,313
Height of shoulder .....	1,286.4	1,478	1,111	1,189.9	1,255	1,070
Tip of second finger .....	578.5	690	500	544.5	589	468
Finger-reach .....	1,601.7	1,815	1,400	1,465.1	1,578	1,362
Height sitting .....	823.3	883	729	776.8	829	693
Width of shoulders .....	351.6	391	311	323.6	352	297
Length of head .....	181.5	204	170	173.0	182	165
Breadth of head .....	147.6	162	137	141.0	154	134
Height of face (a) .....	175.8	200	156	162.8	183	142
Height of face (b) .....	112.5	125	103	105.6	118	96
Breadth of face .....	139.1	155	125	131.0	141	123
Height of nose .....	48.3	57	41	44.0	51	36
Breadth of nose .....	38.6	45	31	34.6	40	30
Length of ear .....	60.1	71	51	57.8	68	52
Arm index .....	45.1	47.5	40.2	44.4	47.4	42.5
Finger-reach index .....	102.4	109.4	94.3	101.0	104.3	96.5
Sitting-height index .....	52.6	56.8	48.6	53.5	56.8	50.9
Shoulder index .....	22.4	24.3	20.4	22.2	23.8	21.3
Cephalic index .....	81.3	90.1	72.5	81.6	92.7	75.8
Facial index (a) .....	79.3	96.8	68.9	80.6	89.7	69.3
Facial index (b) .....	123.8	138.3	104.0	124.0	132.0	114.9
Nasal index .....	80.2	100.0	65.4	78.9	100.0	66.6

## THE CHINANTECS

These mountain Indians present a fine type, with two well-defined sub-types — youthful and mature. They are of little stature sub-brachycephalic, and mesorhinian. The youthful type has a broad, flat nose, with a straight (or occasionally concave) ridge and a flat tip; the eyes are widely spaced and often oblique; the mouth is large, with thick lips, of which the upper projects notably beyond the lower;



FIG. 20. CHINANTEC: SAN JUAN ZAUTLA, STATE OF OAXACA

TABLE XXII. CHINANTECS

	MEN (100)			WOMEN (25)		
	Mean	Max.	Min.	Mean	Max.	Min.
Stature .....	1,575.8	1,700	1,430	1,398.8	1,503	1,308
Height of shoulder.....	1,297.4	1,428	1,155	1,143.4	1,263	1,076
Tip of second finger.....	582.2	657	498	505.9	583	466
Finger-reach.....	1,608.1	1,793	1,432	1,409.5	1,540	1,345
Height, sitting.....	847.8	935	782	763.3	831	710
Width of shoulders.....	353.4	390	323	322.2	351	285
Length of head.....	181.4	203	165	176.6	186	165
Breadth of head.....	151.9	168	140	146.0	155	130
Height of face (a).....	176.8	202	157	167.4	175	144
Height of face (b).....	115.6	132	101	104.8	114	96
Breadth of face.....	145.0	163	135	135.9	142	128
Height of nose.....	50.4	61	42	45.2	52	40
Breadth of nose.....	39.9	50	34	37.4	45	33
Length of ear.....	62.9	73	56	60.7	71	52
Arm index.....	45.4	48.8	41.8	45.5	47.8	43.4
Finger-reach index.....	102.8	109.9	93.6	103.1	107.5	99.5
Sitting-height index.....	53.9	56.6	51.4	54.5	57.4	52.2
Shoulder index.....	22.4	24.5	20.5	22.9	24.6	21.4
Cephalic index.....	83.7	96.4	74.0	82.7	90.3	75.8
Facial index (a).....	82.2	94.2	73.3	81.2	88.8	75.7
Facial index (b).....	125.7	146.2	106.9	129.8	139.6	120.1
Nasal index.....	79.6	97.8	59.3	82.9	97.5	71.4

the face is flat, and wide at the cheek-bones; the skin is dark (16). With age this changes to the mature type. The nose becomes finely aquiline and moderately wide, or narrow, at the root; the upper lip becomes less projecting; the skin lightens up to a certain age, after which it again darkens, becoming finally fixed at (23-4).

The hair is straight and black; in three cases it was gray, in nine somewhat sprinkled with gray, and in two somewhat brown; seven cases were slightly wavy or curly. The beard was gray, or gray sprinkled, in fourteen, and brownish in seven, cases. The commonest beard formula was: medium (or none), none, scanty; medium. The scanty chin beard is almost confined to the point and a middle vertical line. Several subjects, particularly among the youthful type, showed a fine, black, downy growth upon the forehead. Eyes are dark brown, often widely separated, and rather frequently (there were nineteen cases) oblique. Eyebrows are frequently continuous. While the nose in the mature type is finely aquiline, it is not large and is often low. The lips are moderately thick and somewhat projecting. The ear is round and close to the head; the border of the upper part of the helix is rolled inward and thin; that of the lower part is flat and thick (thin); the lobe is large, attached, and round.

Fifty years appears to be a considerable age, and those claiming to be so old usually were wrinkled and had prominent lower, and shrunken upper, jaws. Several were pock-marked; two had cataract. The fourth and fifth toes are frequently of the same length; this peculiarity is also common among Triquis and Mixtecs. At San Juan Zautla, where there are but eighty *contribuyentes* (there were formerly one hundred and nine), imbecility is common and we saw one deaf-mute. At San Pedro Zoochiapa conditions appear better.

Women present no noteworthy features. In our series, two women were barren; the other twenty-three had borne one hundred and nine children, of whom thirty-six had died.

### THE CHOCHOS

The Chochos are of little stature, sub-brachycephalic, and mesorhinian. Their arms are moderately long and their shoulder-width surpasses that of all the other tribes. The face tends to become low and round, with the maximum breadth, at the cheek-bones, larger than the maximum cranial breadth. The hair is black and straight: there were twelve cases gray, nine sprinkled with gray, and one brown; a tendency to curling, especially on top of the head, is noticeable; thinning of the hair on top of the head is rather common. The beard commonly follows the formula: medium (or none), none (or medium), medium; medium. Fully one-half the subjects conformed to this formula, showing that the tribe is, relatively, heavily bearded. The beard was gray in seventeen, gray sprinkled in thirteen, and brown in seven, cases. The eyes are dark brown and well separated; in thirty-eight subjects they were oblique. The nose is broad, with a fat, flattened tip; it tends, however, to become longer, and even aquiline, with age. The lips are thick and projecting. Ears are round and close to





FIG. 21. CHOCHO: COIXTLAHUACA, STATE OF OAXACA

TABLE XXIII. CHOCHOS

	MEN (100)			WOMEN (25)		
	Mean	Max.	Min.	Mean	Max.	Min.
Stature .....	1,562.2	1,684	1,437	1,433.4	1,524	1,375
Height of shoulder.....	1,285.5	1,368	1,172	1,169.2	1,249	1,116
Tip of second finger.....	567.0	640	490	527.1	600	450
Finger-reach .....	1,609.0	1,810	1,434	1,467.9	1,546	1,375
Height, sitting.....	824.3	895	757	768.2	828	720
Width of shoulders.....	364.2	403	312	329.9	359	288
Length of head.....	187.6	200	171	178.5	188	170
Breadth of head.....	151.0	165	138	147.0	151	136
Height of face (a).....	179.9	200	159	168.8	188	155
Height of face (b).....	114.9	126	103	106.5	118	98
Breadth of face.....	144.0	158	134	136.0	149	129
Height of nose.....	49.3	61	40	43.5	50	37
Breadth of nose.....	40.6	49	33	36.4	43	32
Length of ear.....	62.5	77	54	59.0	66	52
Arm index .....	45.9	50.7	43.4	44.7	47.9	41.2
Finger-reach index .....	103.0	111.7	97.2	102.6	107.3	96.9
Sitting-height index .....	52.7	57.2	49.9	53.5	55.9	50.5
Shoulder index .....	23.2	26.1	20.1	22.9	24.7	20.9
Cephalic index .....	80.5	93.6	74.0	82.4	87.0	75.1
Facial index (a).....	79.8	95.7	69.5	80.7	94.3	71.8
Facial index (b).....	125.5	141.7	113.5	128.0	141.9	116.1
Nasal index.....	82.6	102.3	60.0	84.0	97.6	68.0

the head; the helix border is rolled in and thick above and flat below; the lobe is large, slightly attached, and round. The lower face is often heavy and projecting. The color of the skin is quite constant at (23). Overgrown examples of the youthful type occur; big, babyish fellows. A coarse, light type is also found.

The Chochoes gave us the impression of being extremely cowardly.

Women present the same tendency to obliquity of the eyes, broadness of nose, and thickness and projection of lips that the men do; they present the same uniformity in color, at the same shade. Twenty mothers in our series had borne ninety-one children, of whom forty-six had died; one woman was unmarried.

### THE MAZATECS

The Mazatecs, with a stature of 1551.3 mm., are the shortest of the tribes examined. They are sub-brachycephalic and mesorhinian. The head is frequently flattened behind, giving great apparent height. The hair is black and straight; only three cases were gray and five sprinkled with gray; thirteen subjects presented slight degrees of waviness or curliness; the hair was occasionally thin on top of the head. The beard was gray in four, sprinkled with gray in six, and brownish in seven, cases. The beard growth on the upper cheeks was medium, on the lower cheeks none, on the chin medium to scanty; the moustache was medium. The beard appears late, and subjects from twenty-six to twenty-eight years of age often have none at all, or a scanty growth upon the chin point and the upper lip. The face, at the cheek-bones, is wide, often as wide as the maximum cranial width. The nose is generally aquiline, though neither large nor prominent; the line of junction of the nose and forehead is high to medium and of medium width; the tip of the nose is often broad and flat. The eyes are dark brown and widely separated; in twenty-eight subjects they were more or less oblique. The lips range from medium to thick and there is some prognathism. The lower jaw is frequently wide and heavy-angled. The ear is round, and stands well off from the head; the border of the upper part of the helix is thin and rolled in, while that of the lower part is thick (-thin) and flat; the lobe is large, attached, and round-triangular. The skin color is most frequently at (23); next in frequency is (13-23); seventy-five of the cases fall within these two shades.

Women present much the same type, but are more frequently prognathic. They tend to stoutness, and middle-aged women are sometimes fat. In our series were three barren women and one unmarried woman; seventeen mothers had borne ninety children, of whom forty-seven still survived.

Three or four cases were pock-marked. About the same number of persons were affected by purple *pinto*. The disease of *pinto* is little significant at Huauhtla, but we were told that at Chichotla, which is at a considerable lower altitude, "almost everyone" had it. In disposition Mazatec men are timid; women are less so and far more frank.



FIG. 22. MAZATEC: HUAUHTLA, STATE OF OAXACA

TABLE XXIV. MAZATECS

	MEN (100)			WOMEN (25)		
	Mean	Max.	Min.	Mean	Max.	Min.
Stature .....	1,551.3	1,664	1,433	1,452.7	1,532	1,360
Height of shoulder .....	1,274.6	1,394	1,174	1,187.7	1,265	1,095
Tip of second finger .....	565.3	636	509	548.6	603	495
Finger-reach .....	1,617.6	1,760	1,505	1,472.5	1,584	1,395
Height, sitting .....	815.2	888	754	772.2	811	727
Width of shoulders .....	360.6	401	328	333.5	369	294
Length of head .....	181.5	195	164	177.4	187	164
Breadth of head .....	150.9	165	141	147.0	159	140
Height of face (a) .....	174.0	194	154	170.6	190	156
Height of face (b) .....	112.9	127	103	107.4	117	100
Breadth of face .....	142.1	154	130	136.0	140	130
Height of nose .....	48.5	57	41	44.2	52	39
Breadth of nose .....	39.1	50	30	36.8	42	30
Length of ear .....	62.1	72	53	60.3	69	54
Arm index .....	45.5	48.1	41.3	43.9	46.2	41.4
Finger-reach index .....	104.1	110.1	99.7	101.3	105.9	96.8
Sitting-height index .....	52.5	56.1	49.4	53.1	55.3	50.2
Shoulder index .....	22.9	25.7	21.3	22.9	25.7	20.3
Cephalic index .....	83.2	93.9	74.8	82.9	90.2	76.5
Facial index (a) .....	81.7	93.0	72.2	80.1	88.7	72.4
Facial index (b) .....	125.9	143.2	105.6	126.6	136.6	114.5
Nasal index .....	80.8	102.0	61.4	83.4	95.0	73.1



FIG. 23. TEPEHUA: HUEHUETLA, STATE OF HIDALGO

### THE TEPEHUAS

The Tepehuas are of little stature, sub-brachycephalic, and mesorhinian. Their arms are long and their finger-reach index nears the upper limit in our list. The hair is straight and black; only four cases of the least sprinkling of gray were observed. There were twenty cases where the beard was more or less grayed. The formula of beard growth is: medium, none, scanty to medium; medium. The eyes are moderately separated, dark brown, and, in a dozen cases only, slightly oblique. The nose is usually aquiline, but is neither large nor high; the line of union between nose and forehead is of medium height and breadth; the ridge of the nose is occasionally sinuous; the tip is thick. The upper lip is often notably thick and projecting. The ear is variable in respect of standing off from the head; the border of the upper section of the helix is rolled in and thick, that of the lower section flat and thick; the lobe is large, mostly attached, and round. The color is constant at (24) in fifty per cent. of cases.

Women present much the same type. Twenty-one women had borne one hundred and nine children, of whom fifty-two had died; one woman was childless. Almost everyone of this tribe had lost one or more incisor teeth; this loss was generally attributed to the eating of *panela*, brown cake sugar, of which they are inordinately fond.



TABLE XXV. TEPEHUAS

	MEN (100)			WOMEN (25)		
	Mean	Max.	Min.	Mean	Max.	Min.
Stature .....	1,559.7	1,685	1,470	1,435.4	1,536	1,362
Height of shoulder .....	1,284.5	1,405	1,204	1,182.8	1,287	1,129
Tip of second finger .....	568.5	622	500	537.5	590	483
Finger-reach .....	1,632.0	1,790	1,512	1,478.4	1,594	1,379
Height, sitting .....	828.5	890	760	768.2	820	728
Width of shoulders .....	357.0	403	313	328.8	354	297
Length of head .....	180.0	194	168	174.8	184	167
Breadth of head .....	151.2	164	136	148.0	159	139
Height of face ( <i>a</i> ) .....	173.4	194	153	166.3	180	138
Height of face ( <i>b</i> ) .....	113.7	137	97	103.8	114	94
Breadth of face .....	142.1	151	126	138.2	148	128
Height of nose .....	47.7	55	32	42.8	49	36
Breadth of nose .....	38.6	47	29	34.9	39	31
Length of ear .....	61.7	74	52	59.0	66	51
Arm index .....	45.8	51.2	42.9	44.6	47.5	42.1
Finger-reach index .....	104.5	109.7	99.8	102.9	107.9	98.0
Sitting-height index .....	53.0	58.2	50.4	53.6	58.1	51.1
Shoulder index .....	22.8	25.1	21.0	22.8	24.0	20.9
Cephalic index .....	84.0	92.4	75.2	84.6	93.5	77.4
Facial index ( <i>a</i> ) .....	82.1	93.5	73.1	82.3	91.9	74.1
Facial index ( <i>b</i> ) .....	125.4	150.8	103.6	133.3	155.7	123.3
Nasal index .....	80.7	97.7	63.0	81.5	97.5	68.3

## THE TOTONACS

The Totonacs are of little stature, supra-brachycephalic, having the largest index observed among our tribes (85.9), and mesorhinian. The arm, finger-reach, and sitting-height indices are all high. The Totonacs live in close contact with the Tepehuas, and we expected close resemblance between the two tribes. They present, however, some striking points of dissimilarity. The hair is straight and black; only one case of gray and six of gray-sprinkling were observed. The head remains black even after the beard is white, and a gray head signifies real age. The hair on the top of the head rarely thins. The beard was gray in eleven cases, and brown or brown-black in five; frequently the tip of beard hair was brown or reddish-brown when the rest of the same hair was black. The beard distribution was after the formula—medium, none, medium; medium. The eyes are widely spaced, dark brown, and, in ten cases only, oblique. The nose, often aquiline, is usually low; the line of union with the forehead ranges from high to medium, and has medium breadth; the narrow ridge often extends as a beak beyond the alæ. The lips are thick; the chin is often retreating. These two features combined render a notable prognathism common. The ear is round and close to the head; the border of the upper part of the helix is thin (-thick) and rolled in; that of the lower part is flat and thick; the lobe is large, attached, and round. The cheek-bones are broad and high; the face tapers downward. Broad lower faces and heavy jaw angles, so common among the Tepehuas, are unusual

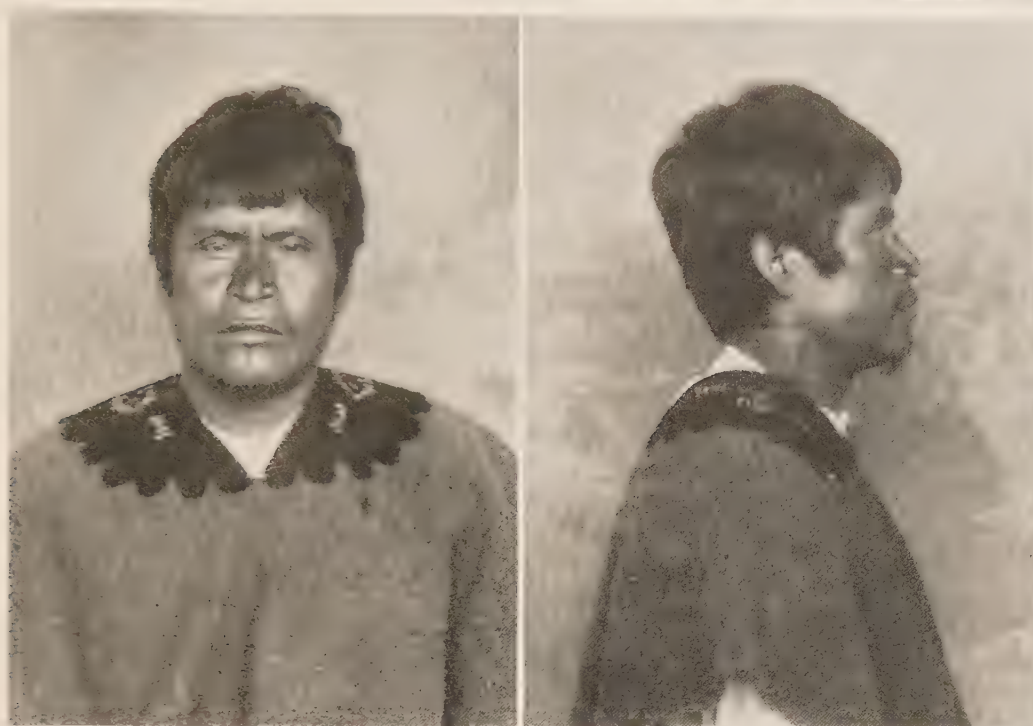


FIG. 24. TOTONAC: PANTEPEC, STATE OF PUEBLA

TABLE XXVI. TOTONACS

	MEN (100)			WOMEN (25)		
	Mean	Max.	Min.	Mean	Max.	Min.
Stature .....	1,573.4	1,669	1,488	1,430.5	1,533	1,332
Height of shoulder.....	1,300.2	1,386	1,214	1,173.8	1,265	1,084
Tip of second finger.....	581.0	619	530	526.5	608	461
Finger-reach.....	1,638.2	1,789	1,528	1,475.9	1,578	1,367
Height, sitting.....	837.6	918	789	759.4	817	717
Width of shoulders.....	359.1	401	317	328.2	357	295
Length of head.....	179.2	109	164	173.5	181	165
Breadth of head.....	153.8	165	140	149.8	161	138
Height of face (a).....	178.8	206	153	168.8	180	158
Height of face (b).....	115.9	129	103	106.6	118	97
Breadth of face.....	145.3	158	135	138.1	148	130
Height of nose.....	49.4	56	42	45.2	51	40
Breadth of nose.....	39.0	47	33	35.0	41	28
Length of ear.....	63.2	74	54	61.0	68	54
Arm index.....	45.5	48.3	43.2	45.2	48.4	39.2
Finger-reach index.....	104.1	110.0	99.4	103.1	107.6	98.5
Sitting-height index....	53.2	56.2	50.7	53.0	55.7	49.4
Shoulder index.....	22.7	25.1	19.7	22.9	25.3	21.0
Cephalic index.....	85.9	95.8	76.5	86.4	92.7	76.6
Facial index (a).....	81.4	94.7	73.8	81.8	87.5	75.1
Facial index (b).....	125.6	138.8	114.0	129.7	142.5	113.6
Nasal index.....	79.1	97.7	60.7	77.7	97.5	58.3

among the Totonacs. The color of the skin is at (24) in more than two-thirds of the subjects.

Women are notably small; many are prognathic. The hair of all women who have reached the age of thirty years is tipped with brown or reddish-brown. Twenty-three mothers had borne one hundred and thirty-one children, of whom sixty-five had survived; two women were barren.

### THE HUAXTECS

The Huastecs, of Tancoco, Vera Cruz, present a well-marked type—presumably that of the tribe as a whole. They are of little stature, and truly brachycephalic. The head is short and broad, but it is also notably flat behind. The hair is straight and black, but subjects from thirty years of age upward often show a sprinkling of gray. There is often no beard upon the lower cheeks, and that of the upper cheeks is sparse and straggling until middle life; the chin beard is usually confined to the tip and central line, but grows to a considerable length; the moustache is permitted to grow long, but is rarely heavy. The eyes are dark brown, rather widely spaced, and often mongoloid; occasionally they are oblique, but dipping slightly at the outer instead of the inner corners; the eye-slit is often narrow. The nose, in younger subjects, is flat, wide, and with broad nostrils; beyond forty years of age it may become aquiline. The mouth is large, and the lips are thick; this thickness is in a vertical direction, and the lips project little, if at all. The face, as a whole, is flat, broad, and even square. The ear is well shaped, but usually stands quite off from the head; the helix border is thick, and the rather large lobe is round and attached. The skin color is light; the ground tint is (23), or (23) to (24), but there is always a mixture of gray—(7) or (8)—with it.

Women present much the same type, but their color lacks the gray tint so noticeable in the men, and is constant at (23) to (24). Fifteen women had borne fifty-five children, of whom twenty-two were dead. This series of women was unusually young, and this number is probably too small; we doubt, however, whether the fertility is great, as the Huastecs are clearly losing ground.

The Huastec language belongs to the Maya family, and the tribe is considered a northward migrant from that great group. We here place the indices and stature of the Huastecs and Mayas side by side:

	Arm	Finger-reach	Sitting-height	Shoulder	Cephalic	Facial	(b)	Nasal	Stature
Huastecs	45.3	103.7	52.8	22.8	84.4	79.1	125.1	78.3	1570.3
Mayas	46.	105.6	51.7	23.1	85.0	83.4	130.4	77.5	1552.4

The differences are notable: in one or two indices only do the two tribes come somewhat near together; they are frequently far apart. Comparison with some other tribe than the Mayas, of the same family, might prove suggestive.

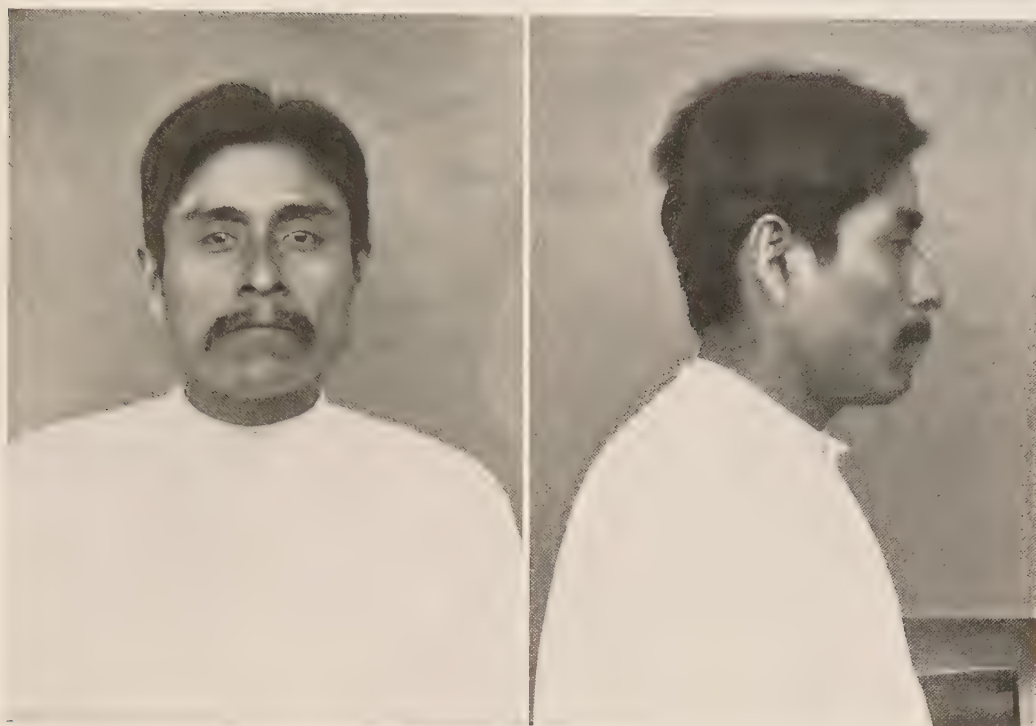


FIG. 25. HUAXTEC: TANCOCO, STATE OF VERA CRUZ

TABLE XXVII. HUAXTECS

	MEN (100)			WOMEN (20)		
	Mean	Max.	Min.	Mean	Max.	Min.
Stature .....	1,570.3	1,693	1,413	1,472.7	1,533	1,403
Height of shoulder .....	1,296.3	1,390	1,147	1,213.0	1,273	1,146
Tip of second finger.....	582.8	656	515	555.1	617	502
Finger-reach .....	1,630.0	1,791	1,478	1,503.8	1,572	1,398
Height, sitting .....	830.8	916	738	774.5	827	731
Width of shoulders .....	359.2	396	324	327.2	357	305
Length of head.....	177.8	196	162	169.4	180	155
Breadth of head.....	150.1	164	140	145.8	158	138
Height of face (a).....	177.5	194	154	167.9	180	155
Height of face (b).....	113.4	130	101	103.8	113	96
Breadth of face.....	141.9	152	134	134.2	143	129
Height of nose .....	48.9	56	43	42.4	48	38
Breadth of nose .....	38.1	44	28	35.2	40	31
Length of ear.....	63.5	71	57	58.9	64	54
Arm index .....	45.3	48.4	40.0	44.7	48.9	41.9
Finger-reach index .....	103.7	109.0	99.5	102.0	106.5	97.7
Sitting-height index .....	52.8	55.9	49.7	52.5	54.1	50.4
Shoulder index .....	22.8	24.8	20.9	22.1	23.4	20.6
Cephalic index .....	84.4	95.7	75.7	86.2	93.8	77.9
Facial index (a).....	79.1	96.7	72.6	80.3	87.7	72.8
Facial index (b).....	125.1	147.5	115.5	128.5	140.6	118.1
Nasal index .....	78.3	102.5	57.1	83.2	97.4	72.3





FIG.26. MAYA: TEKAX, STATE OF YUCATAN

### THE MAYAS

The Mayas are of little stature, with not one tall subject in the series. Their arms are the longest observed, and the finger-reach is the maximum, at 105.6. They are next to the maximum in shoulder-breadth index. Their facial indices are the largest of our list, and their cephalic index next to the maximum. They have been characterized elsewhere as "short, dark, and brachycephalic." Short and brachycephalic they certainly are, but hardly dark. There are no cases at (16), so commonly reached by some of our tribes; the most frequent color is (23) or (23) to (24). The hair is black and straight; in six cases the color was lighter or gray, and in fifteen cases it showed a tendency toward wavy or curly. The beard was lighter in nineteen cases. The growth of the beard is moderately strong, and its distribution much as usual—scanty to medium on the upper cheeks, absent from the lower cheeks, scanty or medium upon the chin, and medium to full in the moustache. The eyes are dark-brown and widely separated; one-half the subjects presented a notable obliquity, though the character tends to disappear with age; in children it is almost universal and well marked. The nose is aquiline, though low, flat, and wide; the bridge is long, sometimes sinuous, and often projects as a central beak beyond the alæ. Lips are of moderate thickness and do not project much. The ear is well shaped and

stands well off from the head; the helix border is thick, and is rolled in above and flat below; the lobe is of fair size, and is attached in about one-half the cases. While the heads are brachycephalic, they are rarely flat behind.

The subject represented in the cut on the preceding page (Fig. 26) presents a well-marked sub-type which is rather common. In this type the large round eyes are widely spaced, and almost stand off from the sides of the face; the nose projects but little, and the chin still less, so that the profile presents an almost continuous simple curve.

It is claimed that pure Mayas have a purple spot in the sacral region, on the back, which is called by the native name *uits*. If such a spot exists it is probably an infantile character like the similar spots which have been described among Japanese, Eskimo, and other mongoloid peoples. We examined three subjects expressly to find this spot and found no trace of it; the youngest of our subjects, however, was ten years old, and it is not unlikely that babies may be marked in this fashion. Among the hundred subjects examined by us we noticed that the little toe is often extremely short.

The women of this tribe present no features which call for special comment. Twenty-three mothers out of the twenty-five of our list had borne a total of one hundred and thirty-three children, of whom fifty-five had died; one woman was unmarried.

TABLE XXVIII. MAYAS

	MEN (100)			WOMEN (25)		
	Mean	Max.	Min.	Mean	Max.	Min.
Stature .....	1,552.4	1,675	1,452	1,415.2	1,500	1,331
Height of shoulder.....	1,283.0	1,410	1,182	1,165.2	1,246	1,074
Tip of second finger.....	567.7	661	497	528.4	595	460
Finger-reach .....	1,641.2	1,758	1,495	1,482.4	1,560	1,415
Height, sitting.....	803.7	887	755	728.9	793	677
Width of shoulders.....	362.1	392	318	325.4	353	287
Length of head.....	181.8	197	165	174.9	183	167
Breadth of head.....	154.1	168	135	148.7	161	141
Height of face ( <i>a</i> ).....	173.4	191	152	174.7	186	155
Height of face ( <i>b</i> ).....	110.6	124	99	101.2	108	91
Breadth of face.....	144.2	156	135	136.9	145	130
Height of nose.....	48.6	60	42	43.3	52	37
Breadth of nose.....	37.5	42	33	35.2	41	29
Length of ear.....	61.7	76	50	61.2	73	56
Arm index .....	46.0	48.5	42.7	44.9	49.1	42.9
Finger-reach index .....	105.6	111.7	100.2	104.7	111.4	99.6
Sitting-height index .....	51.7	54.5	47.9	51.5	55.2	48.6
Shoulder index.....	23.1	25.3	21.0	22.9	24.8	20.6
Cephalic index .....	85.0	94.6	75.2	85.0	89.4	78.6
Facial index ( <i>a</i> ).....	83.4	95.0	59.6	78.4	87.7	71.5
Facial index ( <i>b</i> ).....	130.4	147.1	111.5	135.4	152.1	126.1
Nasal index.....	77.5	93.0	63.3	81.8	105.1	68.8

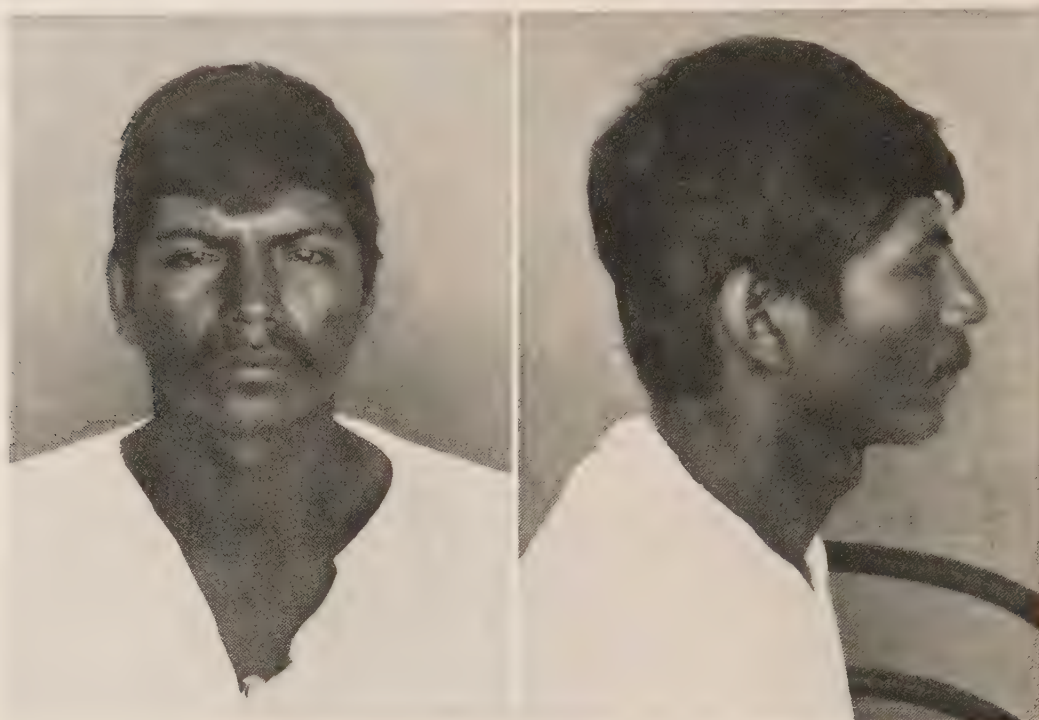


FIG. 27. ZOQUE: TUXTLA GUTIERREZ, STATE OF CHIAPAS

### THE ZOQUES

The type of the Zoques is not clearly defined. They are among the taller tribes, having a mean stature of 1,600 mm., and only forty-nine of the hundred subjects falling within the group of little statures. In regard to all other measurements they occupy an intermediate position. The skin color is light; (23) is the most common tint, and (23-13) is next in frequency; women are a little lighter than men. The hair grays rather readily, and cases where it is slightly wavy or curly are not rare. The beard is scanty and straggling, or is entirely absent, although the moustache is fairly abundant. The eyes are dark brown and widely spaced; even a slight amount of obliquity is uncommon, and when it occurs is mostly in young subjects. The root of the nose is seldom depressed, but it is never really high; the bridge is straight, with a suggestion of concavity in young subjects, but becomes boldly aquiline and prominent in old persons. The upper lip is often notably, the lower feebly, developed; the lips project little, and when they are thick the thickness is vertical. The chin is often weak. The lower face is frequently broad, even as much so as the face at the level of the cheek-bones. The rather low forehead is frequently retreating, and, when this character is combined with wide cheek-bones and a slight occipital flatness, gives an impression of acrocephaly. This combination is not rare. The ear stands well off

TABLE XXIX. ZOQUES

	MEN (100)			WOMEN (25)		
	Mean	Max.	Min.	Mean	Max.	Min.
Stature .....	1,600.0	1,766	1,442	1,474.8	1,586	1,372
Height of shoulder .....	1,316.8	1,420	1,182	1,210.5	1,300	1,120
Hip of second finger .....	591.0	646	501	564.0	618	498
Finger-reach .....	1,651.8	1,785	1,469	1,497.5	1,619	1,398
Height, sitting .....	841.8	908	721	791.0	845	717
Width of shoulders .....	356.9	393	318	331.1	367	298
Length of head .....	182.3	196	171	175.7	185	163
Breadth of head .....	146.2	161	132	143.1	151	135
Height of face ( <i>a</i> ) .....	175.7	194	155	172.0	193	154
Height of face ( <i>b</i> ) .....	113.2	127	102	106.5	113	97
Breadth of face .....	139.5	154	127	138.0	141	125
Height of nose .....	62.3	76	54	46.0	51	40
Breadth of nose .....	37.8	44	32	35.2	39	31
Ear length .....	62.4	76	54	58.5	64	53
Arm index .....	45.4	52.6	43.3	43.8	47.5	42.0
Finger-reach index .....	103.2	108.6	96.6	100.9	106.2	94.0
Sitting-height index .....	52.5	56.2	48.2	53.7	56.4	50.5
Shoulder index .....	22.2	25.4	19.7	22.4	23.8	20.1
Cephalic index .....	80.2	89.5	69.4	81.4	86.3	76.7
Facial index ( <i>a</i> ) .....	79.9	92.2	69.5	77.9	84.8	70.7
Facial index ( <i>b</i> ) .....	123.2	137.5	109.0	126.1	140.2	116.3
Nasal index .....	77.4	95.3	61.1	76.9	92.5	64.0

from the head; the upper section of the helix border is thin and rolled in, while the lower section is thick and flat; the lobe is large, attached, and round (-square); it is not unfrequently free.

Women present few peculiar features for consideration. Their nose is large and aquiline in a degree unusual in the sex; they are somewhat prognathic, though the lips protrude little, being thick vertically. Large families—ten, twelve, thirteen children—are not rare. Among our subjects were five unmarried women; the remaining twenty had borne one hundred and forty-three children, of whom fifty-six had died. The number of unmarried women is the largest we have observed. Women generally show great asymmetry of shoulders, one being much higher than the other; a woman not thus affected is the exception. We attribute the condition to the peculiar mode in which these women carry babies. The child is slung at one side, hung in a cloth band, which passes over the opposite shoulder.

*Pinto* is a common disease among Zoques, occurring in both men and women. No cases of the red form were seen, but the white and the blue were frequent, and frequently occur in the same individual. The blue is most noticeable upon the face, where it forms connected patches, confluent reticulations, and "powder-dotting." Where blue pinto affects the face, the hands and feet are quite likely to be blotched with white. In a few cases both kinds affected the extremities, which were sometimes a mass of distinct or indistinct color-blotching. Thirteen cases were noted among the hundred men, and six among the twenty-five women.



On account of their linguistic relationship a comparison of the indices of the Zoques and Mixes becomes interesting. When we place the indices side by side we find a fair amount of agreement.

	Arm	Finger-reach	Sitting-height	Shoulder	Cephalic	Facial	(b)	Nasal
Zoque	45.4	103.2	52.5	22.2	80.2	79.9	123.2	77.4
Mixe	44.6	104.3	52.1	22.6	81.8	81.8	122.9	78.8

### THE TZOTZILS

In most respects the Tzotzils occupy an intermediate position. They have a great sitting height, short arms, and noses that are next to the broadest observed. They give the impression of having long heads, and in reality are only surpassed in actual head-length by the Otomis; as their stature is twenty-two millimeters less than that of the Otomis, this impression is really justified. The head is, however, relatively narrow. More than half of the subjects have the color (23); more than half the remainder are at (23-13); they are notably lighter than their neighbors and linguistic relatives, the Tzendals. There were fourteen cases where the hair was more or less gray, but only one where it was anything but straight. The beard is rather abundant; upon the upper cheeks there is a medium growth, the lower cheeks are generally bare, the chin beard is medium or even full, the moustache growth is medium. The eyes are widely separated and often oblique. While the form of the nose is quite uniform, the line of its junction with the forehead varies; on the whole it is of medium height

TABLE XXX. TZOTZILS

	MEN (100)			WOMEN (25)		
	Mean	Max.	Min.	Mean	Max.	Min.
Stature .....	1,559.0	1,669	1,445	1,441.3	1,530	1,373
Height of shoulder.....	1,291.0	1,421	1,165	1,181.3	1,281	1,129
Tip of second finger.....	588.2	671	507	545.4	593	508
Finger-reach.....	1,603.4	1,725	1,447	1,452.6	1,562	1,340
Height, sitting.....	830.3	890	745	783.6	872	734
Width of shoulders.....	346.9	379	309	320.1	350	280
Length of head.....	188.1	200	177	179.7	191	172
Breadth of head.....	144.6	156	135	138.1	147	130
Height of face (a).....	175.2	201	152	166.8	187	151
Height of face (b).....	113.3	132	99	106.0	117	100
Breadth of face.....	140.9	156	130	132.7	144	124
Height of nose.....	48.1	60	42	43.1	48	38
Breadth of nose.....	40.5	46	33	35.5	39	33
Ear length.....	62.1	76	54	58.1	65	52
Arm index.....	45.0	49.3	41.2	44.0	47.2	41.2
Finger-reach index.....	102.7	106.7	96.7	100.7	105.2	95.3
Sitting-height index.....	53.2	58.3	49.1	54.2	60.5	51.0
Shoulder index.....	22.2	24.3	19.7	22.1	24.1	20.4
Cephalic index.....	76.9	82.7	68.5	76.8	81.9	71.9
Facial index (a).....	80.6	93.4	69.0	80.3	89.4	71.6
Facial index (b).....	124.7	144.4	107.5	125.3	142.5	110.7
Nasal index.....	84.8	104.5	63.4	82.6	100.0	73.3



FIG. 28. TZOTZIL: CHAMULA, STATE OF CHIAPAS

and width, but clearly tends to high and medium or even high and narrow; the nose itself is low and flat, with a short and thick tip. The lips are thick, and the upper lip often projects notably. There is little prognathism. The ear, which lies close to the head, is little and well shaped; the border of the helix is thick, and is rolled inward above, flat below; the lobe is large, attached, and round.

Women show few points which need consideration. Their nose is lower and thicker at the tip; their lips are more projecting; they present greater prognathism; and their ears stand off more. The answers secured regarding families are entitled to no consideration.

### THE TZENDALS

In stature at 1557.1 the Tzendals are among the shorter of our tribes; only one case in the hundred was tall, while 75 per cent. were of "little stature." Their sitting-height is only surpassed by that of the Chinantecs. The arms are long and the finger-reach is great. The color is a fine dark brown; it is more uniform than in most tribes; more than one-half the subjects were at (16) and a considerable part of the others were at (13). The hair is straight and black; in ten cases it was slightly wavy or curly and in six of these it was gray or sprinkled with gray. Little or no beard appears before twenty-five years; at its first appearance it is scanty and only on



FIG. 29. TZENDAL: TENEJAPA, STATE OF CHIAPAS

the upper cheeks and on the upper lip; at from thirty to thirty-five, there is a medium growth on the upper cheeks, none on the lower, scanty and short on the chin, while the moustache is from scanty to medium and short. The beard grays earlier than the hair of the head; a single subject only approached baldness. The head is actually long, but the cephalic index, 76.8, is the minimum observed; only 14 per cent. reach brachycephaly. The maximum face-breadth and head-breadth are much the same and were, in many cases, identical. The face is generally prognathic and the lips are thick and protruding. The nose is medium or short, and thick at the tip; the line at the junction of the nose and forehead is moderately high and the nose is there of medium width. The eyes are widely separated and about one-fifth of the subjects showed a slight degree of obliquity. Out of one hundred subjects three had lost one eye by inflammations. The ear is round, of medium size, and close to the head; the border of the upper portion of the helix is rolled in and thick: that of the lower part is thick and flat; the lobe is from large to medium, attached and round.

In women the color runs close to (23) with some cases tending to (13) or (15). Out of twenty-five women three were unmarried and four were barren, the remaining eighteen had borne seventy-four children, of whom thirty-two had died. The eyes of women were notably spaced and in four cases were slightly oblique. The nose is rather wide, and of medium height between the eyes, with short and thick tip. The



lips are rather thick and the upper projects. The ears are round, of medium size and well-shaped; the border of the helix is thick and its upper part rolled in, the lower part flat; the lobe is medium or large, attached, and—generally—round.

The type of the Tzendals, on the whole, presents considerable resemblance to that of the Tzotzils, their close neighbors, geographically and linguistically. Their heads, though large, are slightly smaller than those of the Tzotzils; the impression made to the eye is considerably in favor of the latter. A greater variation in the Tzendals, in ten out of fourteen measurements, suggests that the Tzendals have mixed more with other tribes than the Tzotzils have—or, at least, that the people of Tenejapa have mixed more than those of Chamula. In both of the facial indices the Tzendals are superior; this greater face-breadth, associated with a slightly less cephalic index, is curious. The tribes are quite close together in sitting-height, which is rather large. Though the Tzendals are a little shorter, they have longer arms and a greater finger-reach than the Tzotzils. There is a greater difference in shoulder-width than we should expect.

TABLE XXXI. TZENDALS

	MEN (100)			WOMEN (25)		
	Mean	Max.	Min.	Mean	Max.	Min.
Stature .....	1,557.1	1,722	1,403	1,438.4	1,548	1,338
Height of shoulder .....	1,286.7	1,503	1,153	1,175.2	1,276	1,094
Tip of second finger .....	547.3	656	515	521.3	567	457
Finger-reach .....	1,613.3	1,827	1,419	1,455.6	1,563	1,311
Height, sitting .....	830.0	921	738	772.0	824	720
Width of shoulders .....	342.2	398	295	318.3	352	295
Length of head .....	187.7	202	164	180.7	197	171
Breadth of head .....	144.1	159	128	137.0	144	113
Height of face ( <i>a</i> ) .....	173.0	196	154	162.3	177	153
Height of face ( <i>b</i> ) .....	112.1	131	98	101.8	111	95
Breadth of face .....	140.8	156	127	131.1	137	126
Height of nose .....	47.9	60	40	42.2	48	37
Breadth of nose .....	39.9	50	33	35.6	41	32
Ear length .....	62.2	72	52	57.7	64	49
Arm index .....	45.5	48.7	42.8	45.3	51.2	43.0
Finger-reach index .....	103.4	109.3	97.7	101.1	106.8	96.0
Sitting-height index .....	53.3	58.8	50.7	53.6	56.0	50.9
Shoulder index .....	21.9	24.2	19.8	22.0	23.6	20.6
Cephalic index .....	76.8	86.4	68.0	75.9	82.4	66.4
Facial index ( <i>a</i> ) .....	81.6	94.5	65.6	80.9	87.5	72.7
Facial index ( <i>b</i> ) .....	125.9	144.4	104.9	129.0	141.0	117.1
Nasal index .....	83.8	102.2	64.1	84.6	97.5	68.7

## THE CHOLS

In stature, the Chols fall between their neighbors and linguistic relatives, the Tzotzils and Tzendals, in the list of little statures at 1,557.9—with 75 per cent. of the subjects below 1,600 mm. The arm index is moderate, but the finger-reach index, 103.8, is rather high. The cephalic index is far away from that of all linguistic rela-



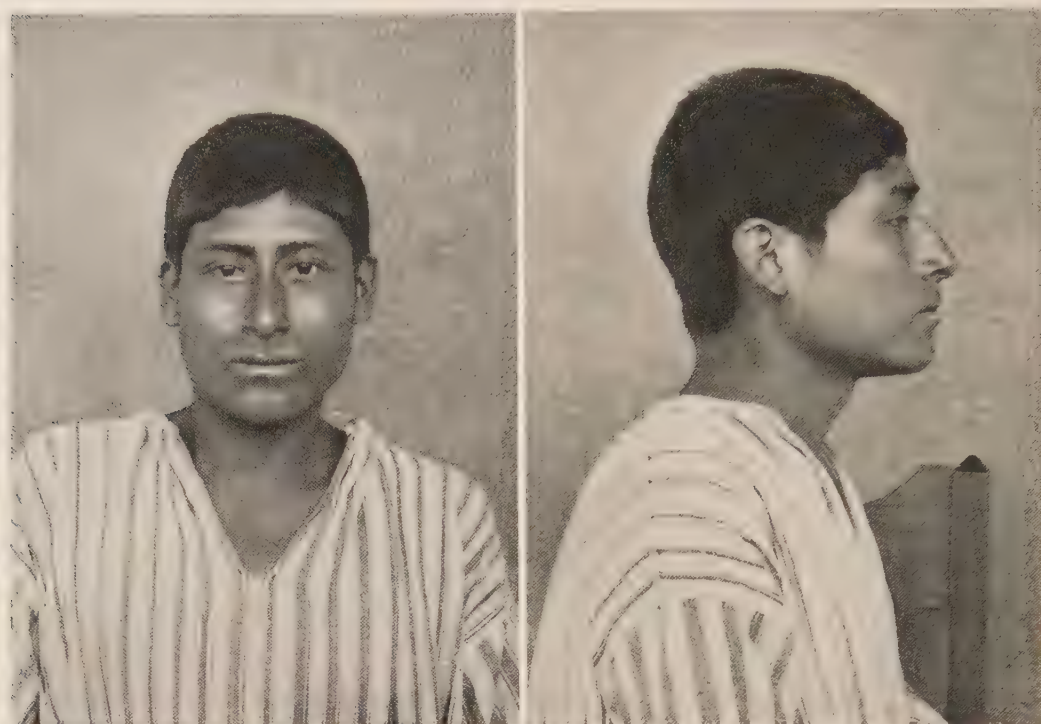


FIG. 30. CHOL: TUMBALA, STATE OF CHIAPAS

TABLE XXXII. CHOLS

	MEN (100)			WOMEN (25)		
	Mean	Max.	Min.	Mean	Max.	Min.
Stature .....	1,557.9	1,686	1,436	1,413.2	1,485	1,305
Height of shoulder.....	1,288.4	1,423	1,184	1,165.6	1,247	1,067
Tip of second finger.....	580.7	685	506	523.1	605	449
Finger-reach .....	1,614.0	1,775	1,289	1,438.1	1,538	1,356
Height, sitting.....	817.8	897	725	748.1	854	680
Width of shoulders.....	346.7	391	289	310.5	343	289
Length of head.....	182.5	202	165	177.1	188	167
Breadth of head .....	147.5	159	134	141.6	153	128
Height of face (a).....	175.8	195	155	166.2	181	150
Height of face (b).....	113.2	128	101	103.2	114	92
Breadth of face.....	141.2	157	128	130.2	139	122
Height of nose.....	48.8	58	41	45.0	50	40
Breadth of nose.....	37.1	48	31	34.2	41	29
Ear length .....	60.4	70	53	58.4	69	51
Arm index .....	45.3	48.4	40.8	45.4	53.5	41.7
Finger-reach index .....	103.8	109.4	98.2	101.7	106.7	94.9
Sitting-height index .....	52.4	55.9	48.6	52.8	64.1	46.4
Shoulder index.....	22.1	25.1	19.7	21.9	23.9	20.5
Cephalic index.....	80.8	95.7	72.4	80.0	90.0	73.5
Facial index (a).....	80.4	90.7	71.2	78.5	84.6	70.7
Facial index (b).....	124.9	140.5	108.8	126.5	139.5	111.5
Nasal index.....	76.4	106.9	58.6	76.1	89.1	61.7

tives. The fundamental coloring is (23), darkening in individual cases to (23-13). These two shades occur in two-thirds of the subjects, and no case varied far from them. There were but three cases in which the hair showed any tendency to wavy or curly; there was no baldness, and only one case of gray and one of gray-sprinkled hair. The beard on the upper cheeks is medium, on the lower cheeks none, on the chin scanty; the moustache is of medium quantity and rarely attains to any length; shaving is quite general; five beards were more or less gray, and two were of a brownish color. The eyes are dark brown and widely separated; while twenty-five cases showed a slight obliquity, not one was truly mongoloid. There was one case of strabismus. The nose is quite large and prominent; it is aquiline, sometimes extremely so; its index is the lowest but one in the list; the line at the junction of the nose and the forehead varies from high to medium and from narrow to medium; when it becomes lower it also becomes wider; but there is no tendency to low, wide forms. The lips are of medium thickness or even thin, and project little or not at all. The ears are round and well formed, and stand fairly off from the head; the upper border of the helix is rolled inward, but opens downward and is flat in the lower part—it is everywhere thick; the lobe is of medium size and attached—varying in form from triangular to round-triangular.

The stature of the females is about 90 per cent. of that of the males; their arm index is the same, but their finger-reach index is less. Their color is a little lighter at (23) and (23) to (15); it has more of a reddish tinge. Among our twenty-five women was an undue proportion of old women—showing three cases of gray hair. There were no unmarried women in our series. Twenty-four mothers had borne one hundred and two children, of whom fifty-nine had died.



## THE SIGNIFICANCE OF SOCIOLOGY FOR ETHICS





# THE SIGNIFICANCE OF SOCIOLOGY FOR ETHICS

ALBION W. SMALL

THIS paper will sketch the argument in support of the following propositions:

1. Every ethical system with a concrete content virtually presupposes a sociology.
2. There can be no generally recognized ethical standards until we have a generally accepted sociology.

## V I. THE DEMAND FOR A UNIFIED VIEW OF LIFE

Modern men are puzzled and perplexed and baffled by the incidents of their own activities. Political and industrial facts are the best illustrations, but in using them we must insist that they are illustrative merely. They are not the whole or the most of life. The production of wealth in prodigious quantities, the machine-like integration of the industries, the syndicated control of capital and the syndicated organization of labor, the consensus of interests in production and the collision of interests in distribution, the widening chasm between luxury and poverty, the security of the economically strong and the insecurity of the economically weak, the domination of politics by pecuniary interests, the growth of capitalistic world-politics, the absence of commanding moral authority, the well-nigh universal instinct that there is something wrong in our social machinery and that society is gravitating toward a crisis, the thousand and one demands for reform, the futility or fractionality of most ameliorative programs—all these are making men wonder how long we can go on in a fashion that no one quite understands and that everyone feels at liberty to condemn.

We live in the most self-conscious period of the world's history. At the same time, the people who think about society were never more widely at variance. "What is your life?" is the old question which every item of social activity throws back upon us with an insistence that grows more irritating at every iteration. Never has there been so much use for a key to the cipher that the incidents of human life compose.

If sociology ever succeeds in establishing itself as the peer of traditional departments of knowledge, it will be through success in reading the larger meanings of life. There are few fractions of life to which some science is not already dedicated. The knowledge which these sciences gain may so oppress us with detail that life as a whole may seem more inexplicable with each discovery. Are we destined to know so many things that deep insight and wide outlook will be impossible? The sociologists believe that a positive philosophy of society may be built up which will indicate the value of each detail of life. The laws of social growth, the meaning of social events, the direction of social tendencies, the relative worth of various social activities, the technique of social adjustments, the sources of social impulse, the direction of rational

social effort, are assumed to be within the realm of the knowable. They are to be discovered in past and present human experience. They will be made out, in part, by further elaboration of the same material upon which more special social sciences labor. The knowledge of which the sociologists have discovered the lack will not be a mechanical assembling of parts produced by other divisions of labor. It will be a generalization and organization of insight into detail, in which at last the details will get a credible meaning as parts of a whole, and in which the whole will not be an abstraction, but a correlation of all the parts.

The impulse of sociology has come chiefly from instinct or perception of this demand. The sociologists believe that the most worthy work of men is effort to improve human conditions. They believe that an adequate theory of life is needed in order that endeavors for improvement may be intelligent. They consecrate themselves to the work of constructing a general science of society, not from desire to shirk concrete social problems, but from conviction that they will contribute most to the solution of practical problems in the end if they hold these concrete interests as completely as possible in suspense, and work as long as necessary upon general theory without regard to its immediate use. Like all work which is scientific in this sense, good work in sociology will seem to the multitude "a vain thing." It is useless to plead in its behalf to the general public, or even to a large fraction of the thinking public. Middlemen must work over sociology, as fast as it is developed, in order to devote it to practical things. Meanwhile, no apology is due for the sociologists' claim. It amounts to this: We need a genetic, static, and teleologic account of associated human life; a statement which will explain what it is, how it is, and why it is; a statement which can be relied upon as the basis of a philosophy of conduct. In order to derive such a statement, it will be necessary to complete a program of analyzing and synthesizing the social process in all its phases. This is the task which the sociologists have discovered, and their work is primarily to develop a method of performing the task.<sup>1</sup>

## II. THE APPROACH OF THE SOCIOLOGISTS TO THE PROBLEMS OF SOCIAL INTERPRETATION

As hinted in the foregoing section, the original impulse of modern sociology was intensely practical. Not how the world came to be what it is, but how to make it what it should be, was the problem that it confronted. In such men as Saint Simon and Owen and the English mid-century Idealists the impulse to change the world was more in evidence than the sense of duty to know the world. Presently reaction from sociological sentimentalism diverted attention from present and future to the past. We have of late been concentrating our interest rather disproportionately upon social beginnings and the process of social development. We have thus become shamefaced

<sup>1</sup>I agree fully with Professor Henderson's estimate of the scientific rank of social technology, when correlated, as he indicates, with a comprehensive sociology. *Vid.*

*American Journal of Sociology*, Vol. VI, No. 4, p. 465, and the paper published in Vol. III of this series, entitled "Practical Sociology in Service of Social Ethics."

about betraying interest in the forward look. The facts about social evolution are not worth investigating, however, except as guides to action. Comparatively little progress has been made as yet toward final formulation of social activities, but they have been prospected enough to warrant some of the sociologists, at least, in returning to their first love. We have not established premises from which deductions of sociological precepts may be drawn directly. We have, nevertheless, found a perspective within which we may safely begin to rearrange our judgments of social ethics.

The two most influential protests in the nineteenth century against the moral sterilities of metaphysical ethics and of orthodox economics were those of Mill and Spencer. They impeached all the traditional forms of absolute ethics, but they made a sorry mess of the attempt to furnish a substitute. Spencer's failure is the more notable, because, on the one hand, his ethical criteria "pleasure" and the "law of equal freedom" prove to be merely two distinct modes of assorting judgments of ethical goods, and of stating the equities of distributing these goods, not principles, and certainly not a single principle, for the discovery of the goods. On the other hand, Spencer's whole philosophy might have been summed up in a theorem which would have served as a clue, at any rate, to a constructive principle for positive ethics. At the close of his *First Principles* Spencer observes: "The utmost possibility for us is an interpretation of the process of things as it presents itself to our limited consciousness." (*First Principles*, sec. 194.) We might say that the substance of Spencer's philosophy is contained in the formula, "The end and explanation of the world-process is the process itself." That is, the process must be its own interpreter. The whole of the process must be the reason for all of it that we can see, and all of it that we can see must serve as tentative explanation of each part of the process which confronts us with a problem. Instead of following this working clue to positive ethics, Spencer chased logical sunbeams.

Our genetic and structural and functional sociology has gone far enough to put us on the positive scent again. We have not made out the mysteries of the social process very minutely, but we have become conscious that there is a process. We have made some approximate analysis of its content and of its method. We are able to form rather confident judgments for practical purposes about conduct within this process. The next step for our intelligence to take is recognition that these practical judgments of conduct within the actual life-process are the raw material of the only ethics that promises to gain general assent. These judgments enlarged, criticised, and systematized are the best that we can know about what is worth doing. They are the real appraisals of conduct, which are the only credible indexes of the concrete content fit to fill the categories of formal ethics.

### III. THE ETHICAL POVERTY OF SOCIETY

Society is ethically bankrupt. We have some ethical assets, but they are a small percentage of our liabilities. Speaking generally, our ethical capital consists of a



heterogeneous collection of provincial moralities. They work together with that degree of success which we observe in the conduct of society. By means of them society keeps in motion, but in spite of enormous waste consumed upon the frictions which retard the motion. We have no universal ethical standard to which one class may appeal against another class and get a verdict which the defeated litigant feels bound to accept. For instance, all of us have the concepts "right" and "wrong." The majority of us believe that so far as it goes, and until society sees reasons for revising it, what the civil law demands is right and what it forbids is wrong. But a minority of us do not admit even that. We are thus divided at the outset into the class that rejects and the class that accepts the general obligations of the law. At one extreme of the second class is the species known as the law-breakers; yet even this left wing of the less social division of society has still its own ethics, its peculiar standards of right and wrong. It is right to conceal a fellow-criminal from the officers of the law. It is wrong to "peach on one's pal." Within the law-abiding class there is a permanent world's exposition of clashing moral standards. They fall into mechanical adjustments with each other in obedience to social influences which we need not schedule, but constantly recurring conflicts of ethical standard display abundant evidence that assumption of a common criterion is unwarranted. We are not referring to immorality in itself, however defined, but to ethical confusion. Our thesis is that in cases of moral conflict individuals of not very dissimilar types will be found to assume quite dissimilar principles for settlement of the conflict. If we pry into the ethical ideas behind our conduct, we find confusion, not only between different men, but the same man has one standard for his business, another for his politics, another for his amusements, another for his religion. The proposition is not that men are conscious and intentional hypocrites, but that if we should put Socratic questions to ourselves we should find that our purposes in life are not morally concentric, and that we are constantly referring certain parts of our conduct to one kind of principle, and other parts of our conduct to principles which do not belong in the same system. We all know, for instance, that there is one code of professional ethics for the lawyer, another for the doctor, another for the editor, another for the employer, another for the employee, another for the teacher, and another for the minister. These vocational codes do not necessarily stand upon different ethical planes, but they consist of judgments of different orders of utility, and it is not at all certain that the persons who accept and apply one of these codes are able to reach corresponding judgments of utility in activities more remotely related to their peculiar vocations. All of us see certain bearings of action within our peculiar sphere, while we have comparatively little insight into the peculiar situation of the other spheres, or of the relativity of conduct in the different spheres. We need not claim that the different provincial moralities are not reconcilable with each other. We simply cite the fact that in the minds of most of us they are not reconciled with each other. The doctor lives within the dictates of the medical code, the merchant of the commercial code, the preacher of

the ministerial code, and so on. Each might be conspicuously helpless if obliged to solve the moral problems that occur in the spheres distant from his own. The preacher, for instance, often lays the flattering unction to his soul that when he puts his finger on what he thinks the sore spots of society, and prescribes treatment for their cure, the opposition which he provokes is caused by the prickings of guilty conscience. It is quite as likely to be the contempt of insulted intelligence. He does not understand the situation as it looks to the people most concerned, and his ignorance of the facts makes his judgment of relations worthless. On the other hand, the minister who ventures into the field of commercial speculation is quite apt to exhibit phases of moral obtuseness which men of commercial training would denounce as beneath the standards of honesty which business requires. Men of one class take serious risks of arousing hostility to ethics in general when they attempt to carry the moral precepts proper to their own sphere over into the sphere of others. The reason is, in brief, that each of us works under the code peculiar to his calling as a means to a certain end. For instance, the legal profession tends to confine its function to the "practice of law" in a strict sense, with slight attention to reaction upon the law so as to affect it from the standpoint of society at large outside the profession. Few of us have so generalized our calling, or thought out the relation of its end to all the ends proper to all the members of society, that we can adapt the principles appropriate to the calling to the activities of people at other points in the social process. In other words, society is divided into more or less visible groups, each with a regulating tradition of its own. These codes together imply an endless variety of recognized or unrecognized ethical assumptions, between which there are countless degrees of non-correspondence, often reaching utter contradiction.

Suppose, for instance, we are in the midst of a labor conflict. It is proposed to arbitrate the difficulty. Representatives of the conflicting parties meet. A looker-on, if he happen to be a philosopher, soon discovers that the issue cannot be decided upon ethical grounds, for the conflicting parties, and perhaps the arbitrating board, have each a different standard of ethics. The employers' ethics are founded upon conceptions of the rights of property. The employees' ethics take as their standard certain conceptions of the rights of labor. The arbitrator's ethics may vary from the lawyer's interpretation of the civil code to the speculative philosopher's conception of the ideal rights of the generic man. There is no common ethical appeal. Neither litigants nor referees can convince the others that they must recognize a paramount standard of right. The decision has to be reached either by resort to force or by a compromise of claims, each of which continues to assert its full title in spite of the pressure of circumstances. To be sure, our habits are molded by a complex social restraint which limits the scope of our moral choice, but when we encounter conflicting claims of right and wrong we find ourselves betraying belief in fundamental ethical postulates which we are unable to reconcile.

Outside the beaten track of necessary conformity to social requirement our ideas

of right and wrong are variations of conceptions which we are powerless to harmonize. Some of us think that the last measure of right is what physical law permits; some of us think it is what statute law permits; some again think it is what divine law demands, and still others what individual preference suggests. More than this, there is infinite variety in the rendering which the believers in physical law, statute law, divine law, and individual choice give to the standards they assume. To many people so-called ethical standards are only the private opinions of persons who take their own moral judgments seriously. To others there seem to be ethical standards with neither variableness nor shadow of turning. To still others ethical standards constitute a sliding scale toward which individuals have mysteriously adjustable relations. The absence of a central tribunal of moral judgment is the most radical fact in our present social situation. It will appear presently that this state of things reflects the fragmentary and incoherent sociology in our minds. That is, moral judgments are necessarily judgments as to the effects produced by actions operating as causes. In order to know how social actions operate as causes and produce effects, it is necessary to have description and explanation of the social process, and of the structures and functions involved; for it is with reference to these that our moral judgments assume knowledge of cause and effect. We are guessing at the premises of our moral judgments unless we know how causes act in the situation in which they operate. Each conflicting idea of moral standards implies a philosophy of life more or less developed, a sociology more or less complete. There can be no agreement about these moral standards until there is agreement about the presupposed view of life that gives the morality its sanction.

#### IV. THE RELATION OF ETHICAL TO SOCIOLOGICAL PROBLEMS

Human life is a plexus of relationships which we may formulate technically as the interplay of psycho-physical mechanisms that are installed in the individuals. Those phases of human activity to which the concept "ethical" is applicable have to be analyzed at last in terms of this psycho-physical mechanism, and of the conditions in which it operates. Indeed, for our purposes we may define psychology and sociology by the same formula, merely shifting the emphasis to indicate the peculiar problems of each. Psychology is the science of the *mechanism* of the social process. Sociology is the science of the mechanism of the *social process*. Using the term "psychology" for both process and results of analyzing the social mechanism, we may claim to have learned to distinguish very sharply between that knowledge of sentient activity which traces the causal series from condition and stimulus to that discharge of motor energy which we call the act; and, on the other hand, that quite different order of knowledge which consists in the valuation of the act itself. Thus we may have the psychology of the taboo, of the suttee, of play, of war, of social distinctions, of institutional charity, of partisanship, of patriotism, of religion. Analysis of the activities so



classified may be, and in proportion as it is perfectly abstracted it is, as independent of ethical valuation of them as physiological and pathological examinations of the effects of a blow, a stab, or a gun-shot wound are of judgments about the morality of homicide. Sociology is concerned characteristically less with the mechanism of the process and more with the process and the worth of the process. Science is sterile unless it contributes at last to knowledge of what is worth doing. Ethical science is fruitful in the exact degree in which it promotes this knowledge. Sociology would have no sufficient reason for existence if it did not contribute at last to knowledge of what is worth doing. As it is hardly worth while to challenge the traditional concession of the whole field of conduct-valuation to ethics, we may frankly rank sociology as tributary to ethics. The ultimate value of sociology as pure science will be its use as an index and a test and a measure of what is worth doing.

The general thesis of this paper may be restated therefore in this way: Ethics must consist of empty forms until sociology can indicate the substance to which the forms apply. Every ethical judgment with an actual content has at least tacitly presupposed a sociology. Every individual or social estimate of good and bad, of right and wrong, current today assumes a sociology. No code of morals can be adopted in the future without implying a sociology as part of its premises. To those who are acquainted with both the history of ethics and the scope of sociology these propositions are almost self-evident. They may be left, therefore, at this point without the support of argument or illustration. In a later portion of the paper we return to them after an introductory survey of the work of sociology.

The details of human life cannot be divided up among sciences as a hoard of coins might be distributed among inheritors. The problems which life presents call rather for intellectual effort in the course of which the different methods of procedure appropriate to different divisions of science are in turn undermost and uppermost and foremost. The ultimate problem on the side of pure science is: *What is worth doing?* The ultimate practical problem is: *How may the thing worth doing be done?* The former is the most general form of the constructive problem of ethics; the latter is the most general form of the technical problem of life. General sociology, as the science of ethical content rather than of ethical forms, finds its positive problems midway between psychology, on the one hand, and social technology, on the other. Its business is to make out the connections between the different details of activity which make up the life-process as a whole, so that these connections will indicate a positive content for the ethical categories. More concretely expressed, the fruitfulness of sociological procedure begins to be visible after we have observed the phenomena of the taboo, of the suttee, of play, of war, of social distinctions, of institutional charity, of partisanship, of patriotism, of religion, and of the countless other social relationships of which these may serve as samples. The problem of sociology properly begins after we have accounted for these phenomena, in terms of psycho-physical causation. It begins after we have taken account, it may be, of the judgments that



the persons taking part in them entertained of the value of these activities. The sociological problem is primarily to visualize all human activities in a perspective corresponding with reality; it is, second, to discover whether there is any principle of correlation between these activities, by means of which it may be possible to decide, from the standpoint of humanity in general, that any selected act in the series, or any class of acts, was or was not worth doing; that is, in harmony or disharmony with the principle of correlation. The problem of sociology is, third, to generalize those means of valuing past conduct into means of deciding whether this or that in the present is worth doing; or, more specifically: What is the activity indicated by a social situation, both to the society itself and to the persons who compose the society? While the psychological problem, therefore, is the statement of the mechanism of conduct; and while the ethical problem is the classification of conduct in formal categories based upon some criterion of worth, in the act, or actor, or consequences of the action, or transcendental relationships of action; the sociological problem is objective analysis and reconstruction of human activities in their actual connections as mutually related facts, and discovery of the marks by which we may assign each of these activities to its proper ethical category. Accordingly, disregarding traditional academic distinctions, we may say that the sociological problem is, first, the psychological problem as it is presented, not by the phenomena of the psycho-physical process in the individual, but as it is encountered in the process of the same mechanism, when individuals are in contact with each other. The sociological problem is, second, the positive or concrete side of the ethical problem, namely, the determination of actual values as distinguished from the logic of the categories of valuation. Or, once more, the sociological problem is to express objectively situations between persons, and the interchange of influence between person and person in the situations, and then to determine the positive or negative effects of those reactions upon some relationship of the situation taken as a norm. In this way we divide the sociological from the psychological problem, which is to express what occurs within the individuals as such, and from the ethical problem, which is to indicate the place of these activities abstractly considered in a system of logically related facts.

#### V. THE RELATION OF PSYCHOLOGICAL TO ETHICAL AND SOCIOLOGICAL PROBLEMS

While we have in the last section partially stated the distinctions to which our present title refers, a further delimitation remains. Two distinct problems seem everywhere hopelessly entangled when people discuss moral theory. The first is: What process is involved in arriving at the judgments "good" and "bad"? The second is: What is the final criterion of the validity of our judgments of "good" and "bad"? Whenever the former problem has forced itself to the front, what purported to be ethical theory has consisted largely of mental philosophy, or more recently of psy-

chology. When the latter problem has claimed chief attention, the hypotheses proposed for solution of it ranged from ethical metaphysics to frank empirics. Properly considered, each of these two problems helps to solve the other, but, confused, each helps to make the solution of the other impossible. The question nearest to the actual conduct of life is: How may I know that a judgment of good or bad is worth following? It may turn out that this question cannot be answered until we have an answer to the previous question, how a judgment of good or bad is reached. None the less, the plain man, not a specialist in psychology, does not care how the judgment is reached psychologically, provided he is sure of the logical soundness of the judgment itself.

Now psychology cannot of itself classify valuations as valid and invalid. By one and the same psychological process we arrive at contradictory judgments of value. The process by which one group of persons comes to regard polygamy as good is precisely the same psychologically as that by which another group pronounces it bad. We judge vivisection, vaccination, faith-healing to be good or bad according to our point of view, but the process by which we array ourselves in contradictory judgments is in each case psychologically one and the same. It does not follow that the analysis of the process has no value for ethics. It does follow that we must not permit ourselves to mistake the results of this psychological analysis for a solution of the ethical problem. It will assist us to make this distinction clear if we review somewhat in detail the process of reaching valuations of conduct. This is a necessary preliminary to further discussion of the criteria of conduct themselves.

## VI. THE PSYCHOLOGICAL FORM OF MORAL JUDGMENTS

As we observed above, there is utter confusion about the sociology of ethics. Nevertheless there is in one respect remarkable uniformity in the psychology of our moral judgments. This uniformity is not a matter of reason or of choice, but it is evident in connection with all choices, reasonable and unreasonable alike. However diverse the subject-matter of our judgments, we invariably pronounce anything good or right which is good for something, and other things bad or wrong which are not good for the same thing. In the spring of 1893 the weather in Chicago was unusually severe. The little people who were to represent the Javanese civilization on the Midway arrived perhaps a month before the Fair was opened. They used to frequent the streets in the vicinity of Jackson Park, and the residents learned to pity the little people who came clothed in a way that was no protection against the fickle climate. Toward the end of August a clump of people were gathered around one of the huts in the Javanese village. One of the visitors tried to draw the man of the establishment into conversation. He inquired: "How do you like Chicago?" The little fellow thought a moment, then, summoning all the resources of his vocabulary, together with more expressive pantomime, replied: "Chicago warm, good. Chicago cold, no good!" There

was the rudimentary moral judgment. This man's personal comfort being the standard, things are good and bad according to their physical reaction on himself. Psychologically this is the whole of every determination of right and wrong, good and bad. In other words, we cannot pronounce an estimate of value without implicitly setting up some conception of some desirable end. We then say the things are good that make for this end. To Czolgosz anarchy is an end to be desired. The murder of the president seems to his deluded mind likely to promote anarchy. Because it is supposed to be the means to an end assumed to be good, the assassination of the president is good also. Or again, a generation ago millions of men north and south believed that a certain constitutional order was good. The men of the South believed in state sovereignty. The men of the North believed in a federal union paramount to the states. Each section held its conception of government so dear that, to realize it, the sacrifice of hundreds of thousands of lives was deemed good. The logic is quite different, but the psychology of the three cases is fundamentally one and the same. Each held in view an end assumed to be desirable. Each found a means believed to be tributary to that end. Each rendered the same form of judgment, namely: This means, being tributary to that end, is good. What is true of these instances illustrates what is universally true about moral judgments. They are invariably appraisals of things as good or bad because they are believed to make or not to make for things supposed to be good. Of course, we do not often go through the conscious process of carrying out these steps, when we say, for instance, a blanket, a drink of water, a football victory, or an international treaty is good. If, however, we analyze the process that clown and sage alike perform, it involves these psychological factors. It is a gauging of the value of things in question by their relation to other things whose value is not in question. If it were permissible to use an old term in a new sense, we might give to a familiar word a content more in accordance with its etymological implications by saying that all ethical judgments are *utilitarian* in form; that is, they are judgments of uses. To avoid misconception, we may say that all moral judgments are *telic* in form; that is, they are estimates of the relations of actions to ends. The last recourse in practice, for testing the finality of moral judgments, has to be an appeal to the *relative value of the ends* which in turn are held to sanction or condemn conduct. This is not utilitarianism in the historic sense. It is the larger generalization toward which utilitarianism was a contribution.<sup>2</sup> In other words, all particular moral judgments are implied estimates of the usefulness of the actions concerned with reference to ends contemplated as desirable. This is a psychological fact which is not affected by any theory that we may hold about the ultimate sanction of moral distinctions.

As already hinted, the common fault of traditional ethics of every school has been illusion about the standard actually employed. The systems which are in form most absolute prove upon inspection to be in application alike relative. The fallacy of abso-

<sup>2</sup> For the reason here hinted at, we have proposed the term *telicism* as a title for the ethical system which sociology tends to derive. See p. 31 below.



lute ethics is that in dialectic form a fixed criterion is adopted. It seems to be an invariable standard by which details of conduct may be measured. Practically the criterion when in use is a variable. It is made up of quantities or qualities derived from the things to be measured. Thus the actual standard is not absolute, but relative after all.<sup>3</sup> For example, if the "will of God" be taken as the absolute standard of conduct, each judgment about a specific act will be referred to some assumed expression of the will of God. Accordingly, we have in practice, instead of an invariable norm of conduct corresponding to the alleged norm, the divine will, innumerable accommodations or versions of the norm. Thus the divine will according to Moses, the divine will according to Mahomet, the divine will according to Paul, the divine will according to Rome, or Constantinople, or Geneva, or Westminster, or Massachusetts Bay. Again, if our philosophy posits "well-being" as the criterion of conduct, we no sooner attempt to apply the criterion than we accept some particular phase or features of human condition as the concrete equivalent of our formal absolute; thus, as before, employing after all an accommodating relative standard instead of an inflexible absolute standard.

This fault has not been confined to speculative schools of ethics. Positivists, like Herbert Spencer, have not only committed the traditional fault, but their lapse has been the more notable because they have so distinctly defined the fault. They have first denounced absolute standards of conduct. They have then proposed a "rational" positive test. But presently, just like men of other schools, they have made this test an absolute criterion of conduct, and then in practice they have applied the criterion by shifting adjustments to concrete conditions.<sup>4</sup>

## VII. FURTHER ANALYSIS OF THE PROCESS OF CONDUCT-VALUATION

We must borrow further psychological commonplaces in order to establish a point of departure for our sociological argument.

A. *The judgment of good and bad is involuntary. The standard of good and bad is derived.*

This is the extent of the basis in fact for the intuitional philosophy. The act of judging a thing or an act good or bad is beyond our control. So far as we know, the *genus homo sapiens* has always performed this process spontaneously if the necessary stimuli were present. Neither the process of judging nor the result of the judgment is directly dependent upon the will. In this sense only is moral judgment "intuitive."

On the other hand, the standard with which the thing or act pronounced good or bad is implicitly compared, in order to perform the judgment, is the product of experience. Jonathan Edwards taught a most terrific doctrine of good and evil. His formal morality was many degrees severer than that of most men in the line of intel-

<sup>3</sup>Our dissent from Spencer's ethical philosophy as a whole does not obscure the fact that he has conclusively shown the above to be true, especially in chap. xv of the *Data of Ethics*.

<sup>4</sup>Thus "pleasure" throughout SPENCER'S *Principles of Ethics*.



lectual succession from him today. Yet his working standard permitted him to conduct himself with reference to intoxicating liquors in a way which the working standards of his successors today forbid. The Continental Congress of the American Colonies voted to raise money for defraying the expenses of the war with Great Britain by a lottery. A century later the Congress of the United States pronounces lotteries immoral and turns the machinery of government to their suppression. The judgment of good and bad is probably no more immediate and no more inexorable in the later than in the earlier cases. The standard in accordance with which the later judgment is passed is the resultant of general moral ideas varied by experiences which have intervened between the earlier and the later dates.

The sense of obligation which accompanies acts of moral valuation, and which we perhaps think of as the distinctive or characteristic contribution of conscience to moral processes, may or may not have been aboriginal. Whether the feeling of obligation is intuitive or derived is one question. Whether its psychological basis is different from that of an economic judgment of good and bad, for example, in connection with which no such feeling arises, is quite another question. The former of these problems does not enter into our present discussion. It is enough for the purposes of this argument to distinguish the three facts: first, each person has a more or less vague standard of what is on the whole to be desired or deplored; second, classification of objects or acts as good or bad according as they are desirable or deplorable occurs spontaneously whenever particulars become objects of attention; third, the standard of the desirable or deplorable, that is, of the good or the bad, varies with race, historical epoch, and individual conditions.

B. *The highest thinkable good is a variable condition.* This proposition is not a repetition of the third clause in the last paragraph. It does not mean simply "subjective conceptions of the highest good vary." It means that, if we represent to ourselves any good whatever as a complete and closed finality, we do so by suspending the thought-process. Every good that we can think is a relation of sentient persons in adjustment with situations. The conception of terminated activity may conceivably be inviting to some intelligences beyond our knowledge, but it is repugnant to us. Continued activity involves continuance of adaptation. Our conception of good may advance to specifications of condition to which we can add no concrete particulars; but, with our utmost thought of ourselves, we conceive of ourselves as conscious, as active, as having feelings, as reacting upon our conditions, as thereby changing the conditions, and consequently as requiring new adjustments to the altered conditions. In other words, our definitions of good may not go beyond the statical form, but the implications of all our conceptions of good are virtually dynamic.<sup>5</sup> Suppose we analyze the situation in which a thing once pronounced good has its place; suppose we reach the conclusion that the thing no longer procures the adjustment which the

<sup>5</sup> The history of the ideas "nirvana" and "heaven" at first sight contradicts, but actually confirms, these propositions.

needs of the situation require; our judgment of the goodness of that thing is immediately suspended. We do not at once reverse the judgment in terms, because, as we are pointing out, our standards of judgment are less automatic than the act of judgment. Our feelings reverse the judgment of good, but our intelligence may not reaffirm the verdict of the feelings. We have virtually, however, abandoned our former valuation so soon as conflict appears between the detail in question and the conditions of the situation. The good is at last the good of adjustment. It is the good of activity which can take its place with the other activities that together constitute the situation upon which ethical value depends. That is, as life is *process*, the good for the individual is motion in conformity with the stage of the process in which he belongs. As we shall argue presently, the good for society in any stage is the good fit to assure advance toward the next stage.

C. *The only intelligible measure of good is human condition.* That is always held by men to be good for men which promises to procure the most desirable results for men. It is unnecessary to show in detail that the content of this unit of measure is indefinitely variable. All that is necessary for our present argument is to recur to this fact, that the standard of valuation which we are psychologically compelled to employ is one in which the objects judged are related to the conditions of the persons judging. They can have no meaning for us unless they present some aspect to us which evokes favorable or unfavorable feeling. It may be sense of physical desire or dislike, or the loftiest moral approbation; but it is always a verdict based upon some grounds upon which human feelings can find footing.

D. *The existing body of perceptions about human facts and possibilities must fix the limits of our working judgments of the highest good.* If men agree with Schopenhauer that existence is an evil, they will tend to agree with him that diminution of evil will be achieved only when the death-rate permanently exceeds the birth-rate. If men agree that maximum productivity of material goods is the final criterion of civilization, they will accordingly incline to rate mind, conscience, æsthetic sensibility, family, school, church, state, solely as related to economic ends; and they will obstruct any consideration of material products as means to intellectual, social, æsthetic, and moral ends. Present conceptions of the rational aims of life, and of the adaptability of possible means to attainable ends, must necessarily constitute the working standard of individual and social good. Accordingly, we must learn the virtue which is in the psychological necessity of employing relative standards of ethical value. We must learn to determine that relative standard which involves the nearest approach to absoluteness which our intelligence can achieve.

## VIII. THE SOCIOLOGICAL INTERPRETATION OF HUMAN CONDITIONS

Our discussion thus far has dealt with the psychological conditions of ethical judgments. We have now to sketch the task which sociology attempts to perform in

setting in order the content of those social conditions which furnish the concrete problems of ethical judgment. A certain appraisal of ethical values is inevitable. The sociological problem is so to state the facts, with reference to which this appraisal must stand, that ethical judgments may be based on the ultimate available criteria.

The steps in sociological interpretation may be indicated as follows:

A. When we attempt to organize a sociological program of describing society, we at once encounter the fact that association takes place in a non-human physical environment. Transitional problems of the relation of sentient life to the surrounding physical conditions need not claim in this outline more than passing recognition. That they are actually parts of the conditions to be interpreted may be taken for granted. Since their interpretation is not the task of the sociologist, we need not give it further emphasis.

B. The fundamental detail in purely sociological description is the individual. The physical individual has to be described for us by the physical sciences. The sentient individual has to be described by psychology. The individual of visible action, the unit of all association, is a factor containing, in addition to the physical basis and the mental process, a group of moving interests. These are the main-springs of the individual's activities, and they are the connecting link between the detached persons and the social combination which completes the individual's life. While there is a sense in which no two individuals are alike, it is also true that, in explaining human society in all its length and breadth, we have to do with variations of individuals who are essentially one and unchangeable. Whether our specimens are prehistoric cliff-dwellers, or the select of the 400 on the Cliff Walk at Newport, all the actions of all the persons ever observed may be accounted for by the movings of the same essential motives. These reduce to six sorts of subjective interests, or responses to six sorts of objective stimuli. Every human individual is a more or less highly differentiated demand for satisfactions which may be generalized as *health*, *wealth*, *sociability*, *knowledge*, *beauty*, and *rightness*. These six factors are logically and psychologically reducible to a much lower unity, but they remain the most valid and significant elements for sociological description. Every known phase of association, from the clutchings of the first man-child after food at the dugs of its dam, to the latest diplomatic effort toward a United States of Europe, has been a fermentation of these rudimentary interests. We have found no content for life, thus far, outside of satisfactions of these demands. Human beings are organized requisitions for health, wealth, sociability, knowledge, beauty, and rightness. Human life is instinctive and then deliberative effort to meet these requisitions.

It is worth while to digress for a moment, to show how such an analysis as this bears on the specific problems of life. The fact is that almost all theorists have persistently ignored most of the elements of human motive. They have treated persons as though they were variations of one or two of these interests. Some have



made man a monstrosity of one and others of another of the desires, and each of them has served its turn as a substitute for all. The men who treat human motive from the religious side, for example, have, as a rule, sooner or later surrendered to some form of the assumption that man is essentially a dodger of the wrath to come. The æsthetic philosophers and the bohemians have treated man as a mere collector of agreeable feelings. The mental philosophers have regarded man as a somewhat handicapped intelligence. The individualistic philosophers have seen in man merely a disinherited claimant upon a personal liberty which proves to be incapable of existence outside of visions. Orthodox economists have treated man as essentially a procurer of wealth, and the physical evolutionists treat him as merely a performer of more highly developed bodily functions. The facts all denounce such partialness. When a millionaire, for instance, offers half his wealth to be cured of his disease, he demonstrates, to everyone with capacity and candor to make distinctions, that the health desire and the wealth desire are separable, temporarily at any rate. When a banker resigns \$20,000 a year to accept \$8,000 a year as secretary of the national treasury, he shows the temporary predominance of the sociability element. It is not necessary to inquire whether the content of this particular type of sociability is patriotism, or love of prestige, or desire for political power, or some other variation. Its genus is social, not economic. When Mr. Herbert Spencer exhausted his patrimony in scientific research and publication, he exhibited the fact that the knowledge desire is an independent, and sometimes a prevailing, element among human motives. Millions of artistic careers throughout history demonstrate the same distinction for the beauty desire, and many more millions of philanthropic and religious devotees of all faiths illustrate the like for the rightness desire. The wealth interest is universal. It is usually intenser than all the other desires excepting only that for life itself. It is true, also, that all our other interests are complicated with the economic interest, just as they are with the health interest. The questions of order of dependence and of relative strength of the different desires are subordinate and subsequent. The main point is that it would be just as true physiologically to treat the body as an organism for the consumption of food and that only, as it is sociologically to regard a person as an organism for the consumption, still less for the production, of wealth as an end in itself. Men are never procurers of either health or wealth or sociability or knowledge or beauty or rightness, whichever may be foremost in a given case, without at the same time preserving a distinct interest in all the rest. In a given case, either of these may be an unconscious and negligible quantity. The amount of the several interests becomes a more and more appreciable and effective quantity with every stage of individual and social progress. One of the most important strategic positions for sociology in its campaign against the provincialisms of the social sciences is its view-point that real people are constantly engaged in reconciling these six desires, not merely in satisfying one or two of them alone.

C. At the risk of seeming to commit the fallacy of defining the subject-matter



by itself, we may mention as the second detail of sociological exegesis that the individual is never individual, but always social.

The concept "individual" is one of our convenient concessions to our intellectual incapacity. In view of our mental limitations, it is doubtless a necessary device, but there is nothing in the world of reality to correspond with the notion which the term "individual" is made to connote in all the individualistic philosophies. Individual life, when reduced to its very lowest terms, is still social life. When Crusoe waded out of the surf and took possession of his solitary island, he carried society with him. His wants had been cultivated by social contacts. The symbols by which he expressed to himself his melancholy thoughts were tools elaborated by society. The materials, implements, and weapons saved from the wreck were socially produced. The skill and knowledge to make use of his possessions had been trained by social experience. All human life is a merging of many lives into one life, and a flowing of one life into many lives. Human life is interchange and interaction of all lives. We live and move and have our being, not wholly in ourselves, but chiefly in each other. Our experiences have been for the most part prearranged for us by others before we could appropriate them to ourselves. The house that gives us shelter, the clothes that we wear, the food that we eat, the books that we read, and the games that we play have all been deposited within our reach by the passing of many lives. Yes, even the physical composition of our body is a social affair. The baby born yesterday, and nursing now at its mother's breast, is getting, not the food of nature, but the food of society. All the sciences and arts of civilization are the caterers that serve his innocent meal. The mother's milk was distilled from the tonics of the apothecary, the compounds of the manufacturing chemist, and the artificial supplies of the grocer. It contains some of the disease germs of the town and some of the microbes from the dairy in the country. It is a chemically and mechanically different fluid from that which fills the breast of the savage, or even the rural, mother. The child's tissues begin to organize society into themselves long before its birth. In so doing they merely fall into line with the universal order of reciprocity within the whole range of association.

This detail alone, if given due value, would correct the strabismus in the anarchistic vision. The anarchists assert that social conditions are the authors of misery, and that the legitimate offspring of misery is resistance. The anarchistic ideal of liberty, as a substitute for legal society, is a fantasy that could be realized only by providing each individual with an absolute moral vacuum as his life-sphere. It would have to be made impenetrable by the interests of others. So soon as one personality is conscious of the existence of another, the "liberty" of each ends, and the limitations of both begin. Actual trial of the anarchist theory would exactly repeat the experience of the Irishman's horse. No sooner had the beast learned to live without eating than he died. Liberty without limitation is elimination of the conditions of life. It is society without society. If anarchy were willing to learn double-entry bookkeeping

with its own claim, it would soon be confronted with the other side of the account. Let us make the most of the formula, "Society causes what it contains." The anarchist stops specifying when he sees no more evils to schedule. "Society causes those ills," he says, "then abolish government." If society causes what it contains, it must also be credited with the good. If it produces the thief, the cheat, the liar, it also produces the honest, the truthful, and the just. Whatever is honorable, pure, lovely, and of good report is also a social product. Neither proposition is a whole truth, but each contains an element of truth. Outside of the social condition, men would be like seed with neither air nor soil. Universal sterility would take the place of life. Liberty presupposes society, but society is merely another expression for limitation. Limitation is suspension of liberty only when it ceases to be the limitation of rational adaptation. Liberty and law are not antagonists; they are inseparable condition and consequent. The insanity of anarchy is a phase of failure to discern this dependence. It is true, as all must admit, that society has not yet learned how to burn its own smoke. Unspeakable misery is still an incident of human relations; but on those same partially adjusted relations everything depends that is fortunate and promising. The rational recourse against disease is not suicide, but improved hygiene.

D. Association is formation of individuals into groups. At this stage of sociological description we find that our task resolves itself into parts which are already in charge of various social sciences. To survey the field of human association we have to pass in review all the different groupings in which we find persons arranged. But these, or at least the more obvious of them, have attracted the attention of scholars for centuries. Sociology at this point has really no program distinct from the methods which are valid in the different divisions of description within which the facts naturally fall. The racial groupings belong to ethnology; political groupings to the legal disciplines; industrial groupings to economics; knowledge groupings to comparative science; æsthetic groupings to comparative art; and creedal groupings to comparative religion. In each of these fields description has been carried to a certain degree of refinement. It would introduce unnecessary complications if we tried to show how sociology finds it necessary to fill gaps of description which the traditional divisions of social science neglect. In principle sociology proposes, at this precise stage of description, only what the earlier social sciences have long practiced. If our limitations permitted more detail upon this part of our subject, we might easily show that sociology has discovered much that the other sciences had overlooked about the actual social power exerted by these groupings. They are real forces, not merely convenient terms for classification. From the matings of isolated pairs up to empire-building races; from the domestic food-preparing group to world-commerce; from the star-gazings of huntsmen and shepherds to international academies; from carvings of totems and tatooings of persons to civilized schools of sculpture and painting and architecture and music; from old wives' fables frightening children in the dark of cave and hut and hammock, to hierarchies disputing temporal sway with congresses

of monarchs, the groupings of men must be analyzed to find the constant and the meaning elements in the great reality of association.

E. We have already employed the elementary conception that human association is a *process*. This generalization, however, now so familiar to the sociologists, connotes tremendous changes in the perspective of social philosophy. If we have in mind the essentials indicated by the proposition, we are forewarned and forearmed by it against temptations which play the mischief with the special social sciences. Starting with their selected phases of social phenomena, the sciences that center about racial or industrial or political or religious development particularly have each tended to treat human association as though it were merely variation of species, or production of wealth, or administration of government, or search into the mysteries of the infinite. When these sciences try to interpret real life they too often lapse into narrow dogmatism or mere academic abstraction. The assertion is not impeachment nor disparagement of the special social sciences. It is a means of pointing out that every particular social science is an implicit demand for the reinforcement of all the other social sciences, in order that between them there may be adequate description of actual human life. Society is a grouping of groupings, each of which constantly modifies every other. Let us take the simplest illustration possible. Yonder is the walking delegate of a carpenter's union. He is inspecting a half-completed building. He is a social phenomenon. How shall we analyze and classify him? The ethnologist essays to deal with him. He goes to work on his physical marks. He detects this and that and the other kind of heredity. He tells us that the real significance of this man is his place in the course of evolution from which a new physical type is being created, and with his tools and methods this is substantially all that the ethnologist can discover about him. Then comes the political scientist. He cares nothing about the ethnology of his specimen. He sees in him a political atom. This man is incarnate democracy. He has certain relations of descent from former régimes. He is in the line of influence making toward another régime. He sustains certain relations to the existing legal order. With that our political scientist as a specialist is done with him. Then the orthodox economist takes his turn. To him civil laws are merely the records made by accomplished industrial development. Not the law, but the industry that goes before the law, is the really important matter. Our carpenter to him is a term in the industrial series and a factor in the economic system. What he amounts to as a wheel in the producing mill is the economist's concern. It may be a social psychologist examines him next. He is interested in his general range of intelligence, in his nervous organization, in the sources of his mental impulses, in his type of intellectual activity. He interprets him as a term in the equation of influences that are evolving the brain-processes of the population. Then a minister of religion comes. He learns his ecclesiastical connections, his theological status, his religious quality. He forms conclusions about his spiritual condition. Between them these specialists have pretty thoroughly dissected the specimen, but all of them



together have not discovered the social reality he exhibits. Someone is needed to combine these different thin sections of the specimen into a view of the real man. He is an intersection of all the groupings which human beings form in the pursuit of all the ends of life, and all the ends of life are epitomized in that single man's character. He is a function of the whole process by which men are working together to organize their physiological and economic and personal and scientific and æsthetic and religious interests. Make a cross-section of him, and we find we have in him every fiber of civilization. In weaving the web of the ages, every strand of influence that goes out from man or returns to man sends a filament through this mechanic. In a sense we may say of him, as Longfellow said of the *Ship of State*:

Humanity with all its fears,  
With all its hopes of future years,  
Is hanging breathless on thy fate.  
  
Our hearts, our hopes, are all with thee.  
Our hearts, our hopes, our prayers, our tears,  
Our faith, triumphant o'er our fears,  
Are all with thee,—are all with thee.

That is, this man, typical of all men, carries in himself the evidence that all the phases of human association are ceaselessly working together in a process which binds each man to every man, which makes each man both a finished product of one stage of social production, and the raw material of another. Accordingly the sociologists confront the task of making out the different groupings of persons, and of detecting their interrelations, in such a way that the content of the whole life-process will appear, both in kind and in proportion, in the interrelations of their activities.

F. A further essential of real description of anything is reference of that thing to the end which it is presumed to serve. Suppose, for instance, that I am trying to describe a given chair, but have no idea of the service it was designed to perform. I distinguish certain upright columns and certain cross-bars, then a horizontal plane woven out of straw, then some connections with columns higher than the former, and some further cross-bars connecting the before-mentioned bars; but I have not described anything. I have simply made a catalogue of some unrelated items arbitrarily connected by a common name. But presently I get the idea of a device for the support of the human body in a semi-recumbent position. Then I can give some sort of an account of the relation of these pieces of wood and straw to the process that is to be performed, and the thing begins to have reality. Nothing is ever described properly unless it is described with reference to the end which it is supposed to be fitted to serve. This is conspicuously the case with the fact of human association. Can we get such a view of association as a whole that we may see all around it, and along toward the outcome of it, and may thus describe the details and incidents of it in the light of its ultimate purpose? If the question means, "Can we find an absolute terminal for the social process, and can we describe association as a finished affair?" the



answer is emphatically *no*. Or does the question mean, "Can we discover a definite content of the social process, a work which it is always doing, and which in the nature of the case, as far as we can see, it must always continue to do as long as the process persists?" If this is the question, the answer is emphatically *yes*. The human process is carrying on a work visibly appreciable, but, as far as we can see, interminable. To all intents and purposes that work, carried to the unfolding of all its unimaginable implications, is the ultimate end and aim of human existence. It justifies to our minds all the birth-throes which the process costs. It shades off into such an infinity of unfulfilments that our inevitable quest after setting of the finite in the infinite is gratified. This, then, is the fact which furnishes the last great descriptive category. The essential work which is always going on in human association is a rhythmical process of progression in developing, harmonizing, and satisfying the interests partially latent in persons. Combining now the different descriptive elements, we have this inclusive formula: *Human association is a constant reaction of individuals, operating in functional groups, and procuring larger aggregates and juster proportions of health, wealth, sociability, knowledge, beauty, and rightness satisfactions.*

It is in point to repeat that our discussion all bears at last upon the significance of sociology for ethics. At present we are considering the descriptive value of sociology. Two general observations will epitomize this part of the argument:

1. The sociologists claim that most of the descriptive work done by all the social sciences is love's labor lost. This descriptive work details facts and phases that have in themselves no significance. It wanders off into blind alleys that end only in a pedants' paradise. It virtually stops with cataloguing. Knowledge must proceed to correlation. In sociological estimate the worth of any historical inquiry, for instance, whether in the field of ethnology, economics, politics, science, art, or religion, is tested simply and solely by the amount of light it throws upon the one constant and abiding reality in human experience, viz., this progressive unfolding of more of the implications, and securing more of the satisfactions, of the essential human wants. Our whole historical literature—and the more modern and critical it is, the closer the application of our remark—our whole historical literature is very largely a collection of cases of good men gone wrong, or at best of good men not gone far enough. It is as though one man had described a certain piece of foundation, the material of which it is composed, its depth in the earth, the manner of its disposal, the names and characters of the persons who laid it, and so on and so on. Another man gives an account of some columns; their material, their mass, their style, their number, their designers and executors, with biographical details as before. Another, with similar care, tells of interior decorations, of pictures and statues, and the lives of the artists. Another describes the roof, with the same personal narrative of the builders. Then the analogy requires the appearance of Michael Angelo to pass judgment on these descriptions. He reads them through and through; he wonders at the wealth of labor expended on research; but, after all, his heart is filled with scorn and bitterness. "What boots all

this labor?" he protests. "Here is infinite petty detail for stone mason, and marble cutter, and painter, and sculptor, and roof builder; but what does it all signify for anybody else? The whole in which these belong is not a series of artisan's exhibits. It is an architect's organization, and the architecture is the expression of an idea, and the idea in its turn is a purpose of infinite scope. These scholars have found only some species of mechanical contrivance, where I created a cathedral for the religion of the redemption of man."

When we get a view of the world such as is commanded from the sociological outlook, it turns out to be the theater of a plan of salvation more sublime than the imagination of religious creed-maker ever conceived. The potencies which God has put in men are finding themselves in human experience. This is the drama of life, and our historians, under the influence of the modern critical spirit, are giving us at best only some of the stage-carpentry of detached scenes of the play. The same is the case with our special sciences of abstracted activities in society—economics, political science, ethnology, and the rest. The specifications that satisfy our crude social sciences are a litter of trade commonplaces until they are composed into portrayals of the whole stadium of human evolution to which they in turn belong. Expounders of society give us pictures supposed to be guaranteed by scientific research. At the vanishing point of one picture is the man with the hoe; of another the man with the sword; of another the man with the pen; of another the man with the cap and bells; of another the man with the scepter; of another the man with the cowl. From these pictures the bewildered scholar, and the more bewildered layman, must choose which shall be for him the picture of actual society. The fact is that each of these pictures by itself is false. Life is the perpetual struggle of the eater, the lover, the fighter, the thinker, the jester, the devotee in every one of us for predominance over all the rest. The true picture of passing society is a composite which shows the actual balance between these pictures of life in the present stage of the process of adjustment. The sociologist claims that we are not on the way to the solution of social problems until we can correlate our partial problems of politics or economics or creed with the inclusive problems of the whole human process.

To be more specific, we are dealing in modern society with certain radical questions; for example: Shall we aim for physical enjoyment, or for extinction of sensuous desire? Shall we posit an ideal of government or no government? Shall we plan for private property or communism, for monopoly or competition, for freedom of thought or for perpetual social chaperoning of mind and conscience? These are not questions of biology, or civics, or economics, or theology. They are not questions of ways and means. They are not problems of how to do things. They are questions of what is fit to do. Our special social sciences can no more decide these questions for society than the science of chemistry can decide whether a given individual should become a politician or a philosopher; or than the science of engineering could determine whether another individual should build a private yacht or a villa in the moun-

tains, or an astronomical observatory. A science of the human whole is necessary — its parts, its processes, its purposes — before we can have anything better than dogmatic pseudo-science of fragments falsely held apart from the whole.

2. The organizing work of general sociology is a setting, not a substitute, for the particular analyses required for solution of concrete social problems. Such physical generalizations as the indestructibility of matter, the conservation of energy, the equivalence of forces, never built a bridge, nor dug a tunnel, nor framed a sky-scraper; yet the pure science of physics, and the applied science of engineering have been worked out in constant reciprocity with a general physical philosophy. The more particular concepts with which physics deals, such as density, specific gravity, etc., never equipped an artisan for any specific work, yet no blast of forge nor blow of hammer nor stroke of chisel ever was or ever will be intelligent without reckoning with these general properties of matter. Just so there are certain qualitative properties of human association which adequate description brings to light. They are not accidents of one or another social contact; they are constant incidents of association. They vary incalculably in form and force, but knowledge of them is as essential to intelligence about human conditions as knowledge of physical properties is to understanding of mechanical problems.

As we have just said, knowledge of the general properties of matter never alone equipped any man to master matter. Beyond these general concepts there must be precise quantitative knowledge of the material to be used in order to complete a day's physical work. So of the properties of association. They will not plan workmen's tenements, nor equalize taxation, nor reconcile labor conflicts; yet of such things must the really moral life be full. Of what use to the practical man are the technicalities of sociological philosophy? The same use that pure science of any sort is to the craftsman whose work deals with realities which that science explores. It would be entirely superfluous to enlarge on this relation. It could hardly be dubious in the mind of anyone likely to read this paper. There is a place in this complex world both for all sorts of pure science and for all sorts of constructive art. We are anxious to perfect all the arts that go to make human associations profitable to the individuals who must associate. In this, as in every other kind of practice, there is use for a certain modicum of generalization. That theory must range from the most elementary combinations up and out to the largest systems. Just as we have, most general of all, the science of physics, then less general formulas of physics applied in the technological sciences, then the principles of technology applied in the processes of construction; so, by precise analogy, we have general sociology, then the principles of political economy and political science in its most inclusive sense, and, lastly, the concrete practice of life. Now, as a matter of necessity, most people in the world have to begin at the practical end. But so soon as we arrive at a conception of connection between all human activities, the course of thought necessarily becomes: first the large conception, then the placing of the minor conceptions in the larger concep-



tions, and then the application of all these abstract conceptions in the concrete work that the individual or the group of individuals co-operating must perform.

G. Description, when it is finished, becomes explanation. It is not enough for science to make out collocations. These merely propose the questions which must follow, viz.: Why does this detail occur side by side with that? Why does this fact precede or follow the other? We may say in the rough that mere description is like a topographical chart, and explanation is like a mechanical drawing. That is, a scientific account of anything must advance from form to process, from structure to function.

Before the evolutionary conception and the organic concept thinkers had arrived at certain general ideas which led them to hunt for historic causes. Chief among these ideas were, first, the reign of law in the world; second, the notion of progress; third, the vague suspicion of human unity inclosing all men in all ages within the circumstances of a common life.<sup>6</sup> When these ideas became somewhat distinct in the most penetrating minds, schemes to explain the course of human events were suggested. These became the various philosophies of history. From the end of the fourth century until the middle of the nineteenth explanations belonging under this head struggled for authority. As a background for the sort of explanation that sociology is trying to reach, we may recite the ruling ideas in some of these hypotheses. Looking out upon the same complexity and variation which we today find in human association, the philosophers of history have accounted for it in such fashion as this:

1. The changes in human history have been produced in pursuance of a divine plan progressively unfolding and realizing itself. (Bossuet, Schlegel, etc.)
2. The changes in human history have been produced by topography and climate. (Buckle, Marx, Loria, etc.)
3. The changes in human history are caused by forms and qualities of government. (Bodin.)
4. The changes in human history have been produced by play of economic self-interest. (Montesquieu.)
5. The changes in human history have been due to the personal peculiarities of individuals of the human race. (Voltaire.)
6. The changes in human history have been due to the automatic self-sustaining perfectibility of the human race. (Condorcet.)
7. The changes in human society have been a procession through the recurring cycle: (a) the theological stage; (b) the metaphysical stage; (c) the positive stage. (Comte.)
8. The changes in human history have been a progressive realization of the freedom of humanity. (Jules Michelet.)
9. The changes in human history have been incidents in the divine education of the race. (Lessing.)
10. The changes in human history have been waves or ripples in the flow of a great stream of natural law, which is a secret plan of nature to establish a universal civil society in which political justice will reign. (Kant.)
11. The changes in human history have been gropings, under unrecognized divine guid-

<sup>6</sup> Vid. FLINT, *Philosophy of History*, 1st ed., Introduction.



ance, after the reason which pervades the world, and toward a corresponding art of life. (Fichte.)

12. The changes in human society have been episodes in the self-evolution of the absolute, divisible into a period of destiny, of nature, and of Providence. (Schelling.)

13. The changes in human history have been the workings of the threefold law of the historical world: (a) the hidden ways of a Providence delivering and emancipating the human race; (b) the free will of man, destined to a decisive choice in the struggle of life; (c) the power permitted by God to the principle of evil. (Schlegel.)

14. The changes in human life have been "stages in the progress of human consciousness of God." (Bunsen.)

15. The changes in human history have been without co-ordinating principle; they are essentially individual; there is no permanent truth or real instruction in them. (Schopenhauer.)

16. The changes in human history have been incidents which do not contain in sufficient degree for human interpretation the explanation of themselves. They are related to a cosmic order which must be understood in order to obtain the clue. (Lotze.)<sup>7</sup>

The sociologist is content neither to choose among these explanations nor to abandon the search for explanation. Accordingly, sociology has undertaken a task upon which the old philosophy of history expended all its resources in vain. Very hasty examination would show that as a rule these men shirked positive explanation altogether. They all find recourse in metaphysical assumptions of causation. Using the *a priori* method, they go on to describe the world in terms of the hypothesis.

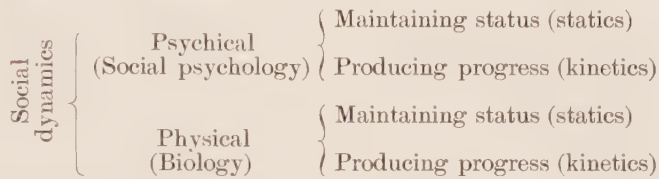
Sociology, therefore, confronts the problem which the philosopher of history usually ignores or declines, viz., the problem of operative forces in human association. In taking up the task of real explanation, sociology is related to the archaic philosophy of history very much as modern psychology is to the old-fashioned "mental philosophy." Psychology and sociology alike today discard metaphysical imaginings, and undertake the task of making out the mechanism, in the one case of consciousness and in the other of association.

H. In the jargon of sociology we say that the task of explaining association calls for the development of a division or sub-science of social dynamics. By virtue of what facts does it come to pass that men live together at all? Through what combinations of facts do they live as they live, and in consequence of what facts do they modify their mode of association? Here is a body of problems as definite, as distinct, and as concrete as those of any physical science, and they are problems that can be solved in no other way than by the process of observation and experiment through which physical science becomes precise. Before we have gone very far toward outlining these social problems, we perceive that the operating forces in human life fall into the two great orders of the physical and the psychical. To explain the life of the American republic today, for example, we have to go back along many lines of race-heredity, and we have to calculate the conditioning influence of climate, soil, topography, and geographical relations to other parts of the world. In the rough we may designate all this as the biological division of social mechanism. Then we have the

<sup>7</sup> For further exposition and bibliography of these theories, cf. FLINT, *loc. cit.*

whole plexus of mental stimuli that set men in motion within their physical environment. We need not in the least minimize the physical element in social mechanism, but even the most strenuous monist will concede that the distinctive factor which differentiates human from brute association, and from merely vegetative phenomena, is the predominance of the mental. Social dynamics becomes not entirely, therefore, but overwhelmingly, social psychology, or, as Tarde prefers to phrase it, "inter-mental psychology."

Furthermore, in the present state of our science, we find it convenient to subdivide our theory as in the diagram. Thus:



Referring to social psychology only, we are mapping out the work of social explanation in the special divisions of social *statics* and social *kinetics*, or the psychology of order and the psychology of progress. In the former field Professor Ross, of the University of Nebraska, has made brilliant explorations, reported in his book *Social Control*, and twenty years earlier Professor Lester F. Ward revolted against the mechanicalism of the reigning Spencerian sociology, and pointed the way to the psychology of social progress.<sup>8</sup>

#### IX. THE SOCIAL CRITERION OF ETHICAL VALUES

We have thus, in the first place (secs. vi and vii), recalled rudimentary psychological facts about the form, the process, and the working criteria of ethical valuation. In the second place (sec. viii), we have reviewed the program of sociology in its attempt to see all human activities, so far as they can be visualized at all, in their real interdependencies with each other. All this is incidental to our main argument that the task which sociology has undertaken must be performed before there is a secure intellectual criterion of moral judgments. Otherwise expressed, in proportion as the task of sociology is performed, and in proportion as the work of sociology is accepted by society, will the intellectual conditions for consensus of ethical judgments be satisfied.

Assuming then our statement of the psychological and of the sociological factors, in organizing interpretations of life, we have not yet reached the most important clue to criticism of conduct-judgments. What has been said may be restated in more general form, and the judgments which make up our body of ethics will at once appear to have a place within this general setting, viz.: *All ethical judgments are virtually estimates of the relation of subordinate parts of conduct to the largest wholes brought*

<sup>8</sup> *Dynamic Sociology*, and *The Psychic Factors of Civilization*.

*into calculation.* All ethical judgments are not only telic in form; they are not only comparisons of concrete particulars with a generalized standard; that standard is not merely a version of human conditions; but all these facts are parts of the more comprehensive fact that conduct-valuations are always appraisals of the ratio between the particular conduct in question and the largest complex of human conditions that the mind at the moment of judging is able to consider. For illustration, let us take a case in the field of so-called individual ethics. Let us assume that we are able in the hypothetical case to exclude all social considerations. Suppose then the conduct in question is the eating of a given dinner. That conduct has absolutely no value for me until I connect it in consciousness with myself as an end. If, then, I consider my hunger purely as a sensation, and the eating purely as a means of substituting another sensation, I at once have a criterion in accordance with which I pronounce the eating good. Myself in a state of satisfaction is more than myself in a state of want, and the conduct that contributes to that increase of myself I at once call good. But suppose I think of myself, not merely as capable of enjoying the pleasures of eating, but as capable of winning an athletic contest, and suppose I am convinced that putting a limit on the quantity or quality of my eating is a condition of my winning. Myself as eating the food which affords less satisfaction to the taste, but which may fit me to win the event, is rated as a larger self than the self eating to the exclusion of winning. Again, I may think of myself as capable, not merely of agreeable bodily sensations and of athletic prowess, but also of mental achievement. I may estimate myself as more of a man when doing certain thinking than when performing certain physical feats. I may discover that the athletic winning may be a foe to the contemplated thinking. I may find that less winning and different eating will promote my mental activity. Thereupon myself as the thinking man towers up into comparison with myself as less than the thinker, and I perhaps once more reverse my judgment about that particular dinner. It is good for the sensuous part of me, it is bad for the athletic, it is good for the intellectual, possibly it might again be judged as bad relatively to myself considered as spiritual in the pietistic sense.

Whenever we form an estimate of value in the realm of individual ethics, it is always implicitly in this mold. Conduct of a lesser self comes into comparison with conduct of a self held to be more or greater. The conduct is pronounced good or bad according as it tends to promote the ends of the one or the other. The fact that we differ interminably as to what is the greater and the lesser self does not affect the main proposition. Before we can have a generally accepted system of individual ethics, we must have a generally accepted philosophy of the individual. Our judgment of specific individual acts or programs inevitably depends upon our perception of the scope and balance of individual life in general. For example, certain good people hold that the virtue of temperance demands absolute taboo of alcohol. Other people who claim to be equally good hold that categorical prohibition of anything is not temperance, but intemperance. They say that temperance has no law in the case of alcohol which is



not equally valid in principle in the case of tea or milk or ice water; namely, the law of utility for the purposes of the whole man. Here then is a specific opposition that betrays a deeper antithesis of the implied philosophies. The one view presupposes a conception of life as a discipline of renunciation. The other view regards life as an economy of appropriation. The one view tends to regard that life as largest which foregoes the most. The other view tends to appraise that life as largest which assimilates the most. Between two such contradictory philosophies there can be only accidental agreement on particular issues. To arrive at harmonious judgments of good, we must reach common ground in our general conceptions of life. The universal fact displayed in all cases of the most contradictory valuation is that ethical judgments are always implicit estimates of the value of mediate ends as tributary to larger ends. Our conception of these larger ends must be fixed before there can be a rational ground for identity of minor judgments.

What is true of conduct thought of as purely individual is true of all conduct upon which we pass valuations. We have all sorts of conventional and arbitrary standards of greater and less. In a situation in which the fighting man is the greatest man, the things that tend to make more fighters are good, while the things that divert possible fighting strength into industry or discovery or other activities of non-militant morality are bad. This does not affect the underlying principle that our conduct-judgments are always verdicts in approval of those things which make for what we think is more and bigger, and of disapproval of those things which make for that which we estimate as lesser and smaller. In the case of individual estimates, as we have just seen, the alternatives are a less and a more complete condition of the individual; that is, the individual as partial, in comparison with the individual contemplated as more fully realized. When we come to value conduct as a social phenomenon, our judgment always proceeds in the same form. We always have some sort of a major premise of the group as greater than the individual. We consequently always pronounce that conduct good which promises to make for the ends of the group as against the conflicting ends of the individual.<sup>9</sup> The only limit to this judgment is encountered when we contemplate conduct which not merely subordinates the individual to the group, but which suppresses manifestations of the individual which are essential to our conceptions of the absolute worth of the individual. Thus, slavery, the suttee, etc.<sup>10</sup>

Thus we have in the foregoing section a formal statement of all conduct-problems. Men are implicitly deciding which self is the greater, and whether in a given instance there is anything greater than self. When we deal with conduct-judgments disinterestedly, our problem always is to decide which of two or more contrasted societal activities is most and biggest, and then whether they must be rated as mutually exclusive, or as principal and subordinate.

Our statement of conduct-problems in terms of quantity is of course highly

<sup>9</sup> Cf. BALDWIN, *Social and Ethical Interpretation*, pp. 29-32.

<sup>10</sup> Cf. BOSANQUET, *The Philosophy of the State: on the Conception of Liberty*, pp. 124-50.



elliptical, but it visualizes the essential form of the problem. It also serves to introduce our application of the formal statement to the social division of conduct-problems, namely: *Our judgment of conduct in association always tends to appraisal of it as good or bad according to its assumed effects upon the largest range of associations that we can take into account.* This statement is also elliptical, but it would distract attention from the main point if we should attempt here to make it more precise.

Recurring now to our analysis of the social process as a whole (sec. viii), we may restate the reality in which the sociologist finds the working criterion of moral values as follows: *The life of the individual, according to the view of the individual which we have proposed, is to be considered as a process of achieving the self given in the interests which prompt the health, wealth, sociability, knowledge, beauty, and rightness desires, but this process produces and is produced by the social process.* Following the same line of analysis, we have as our conception of the social process: *Association is a continuous process of realizing an increased aggregate and juster proportions of the health, wealth, sociability, knowledge, beauty, and rightness satisfactions in the persons associating.* This is the end visible as interpretation and justification of the whole social process. All that goes on among men actually is valued by them with conscious or unconscious reference to its bearings upon some conception of these goods, either severally or collectively. We have no other real measure to apply in a theory of conduct-value.

Institutions, or social activities, as distinguished from activities regarded as purely individual, have their meaning as better or worse methods of promoting achievement and distribution of these satisfactions. The very fact of association, however, displays a relatively advanced stage of the process of gaining these satisfactions. Associations, their means, and their methods are media by which already complicated combinations of these satisfactions and of means of gaining them are guarded and developed. An association or an institution (which is merely a method of activity in association) may not be judged, therefore, with reference to a single sort of satisfaction abstracted from the rest. Government, for instance, is not a means of regulating men merely as seekers of the sociability satisfaction. It would, indeed, be possible to make out a good case for abstract classification of government as predominantly a function of sociability. In practice, however, government is chiefly an activity within the wealth realm, and only secondarily within each of the other realms of interest. So of the content, as distinguished from the form, in the case of every other institution of society. In elaborating a working theory of social ethics, therefore, we find ourselves practically concerned not directly with the ends of human life themselves. Our problems are, in the first instance, the secondary ones presented by the subsidiary means which associations have developed as their ways of promoting the ends of life. In other words, our problem is: *"The ultimate end that gives value to all conduct being the social process as above formulated, what is the value of each and every*

mode of associated activity, considered as a positive or negative means to that end?"<sup>11</sup>

This makes the whole process of judging conduct a process of discovering social functions and relativities.

We may recapitulate the argument as follows:

1. The essential ethical question in all cases is: What is the value of each alternative course of conduct possible in a given situation in connection with the whole system of relations within which it must function?

2. The ultimate social end which we can discover is progressive improvement in so accommodating ourselves to each other that increasing proportions of the world's population will share in a constant approach toward more and better satisfaction of the health, wealth, sociability, knowledge, beauty, and rightness desires.

3. That must count with us as morally good which seems to us on the whole to make toward the end so formulated.

We have thus found that, so far as the psychological process of ethical valuation is concerned, all judgments of conduct are telic. "The adjustment of habits to ends, through the medium of the problematic, doubtful, precarious situation, is the structural form upon which present intelligence and emotion are built. It remains the ground pattern."<sup>12</sup> Our conduct-valuations implicitly assert: "The act in question does or does not make for such and such an end expressly or impliedly assumed to be desirable."

Accordingly, we may hope that the name proposed above for the ethical system to which sociology tends to contribute may prove to be serviceable as more than a mere label. We make use of the term *telicism* as the title for our method of reaching ethical valuations, because we discover that the method which is actual, and actual because it is psychologically necessary, consists in determining the relations of each and every activity to more and more remote ends, until the last end or combination of ends is brought into consideration which the mind can contemplate.<sup>13</sup> This system promises, on the one hand, to furnish a definite content, in place of the merely formal conception "evolutionary ethics," and, on the other hand, its calculation of ends is inclusive, instead of stopping with the small arc of the horizon contemplated by nineteenth century utilitarianism.

## X. DIFFERENT MEANS OF VERIFYING THE FOREGOING CLAIMS

In our rapid outline of the argument we have referred to three distinct groups of phenomena in which the process of conduct-valuation may be traced: first, the

<sup>11</sup> For elaboration of this department of the subject *vid.* PROFESSOR C. R. HENDERSON, article cited above, p. 4, note 1.

<sup>12</sup> PROFESSOR JOHN DEWEY, *Psychological Review*, Vol. IX, p. 229.

<sup>13</sup> For an important note on derivatives from the verb

τελέω, and the adjective τελικός, *vid.* WARD, *Outlines of Sociology*, p. 189. It should be added that if there is any merit in the present suggestion, either as to form or content, it is largely due to Dr. Ward rather than to myself. The case is not altered by the fact that he will hardly be able to accept all that the present argument involves.

ordinary mental activities of the average man; second, the systems of the philosophers; and, third, critical psychological analysis. If appeal is taken to either of these sources of evidence, the result will be the same. Men's judgments are in the form which we have stated. The ordinary man does not become aware of the general ends to which his conduct must be referred in order to give it adequate explanation. The philosopher, as we have seen, deceives himself with abstract terms, and consequently is often able to imagine that his judgments of ethical value are applications of utterly transcendental criteria. The psychologist, reducing all activity to terms of stimulus and attention and choice, confirms our claim that sentient activity, whether the plain man's practice or the philosopher's theory, always proceeds with implied, if not conscious, reference to some conception of the social process within which that activity derives its meaning. We may, by way of parenthesis, reiterate our observation above, that the methods of treating history latterly in vogue leave very much to be desired in the way of exhibiting the functional values of the activities which have filled up the life of men in the past. The perspective of our ethical judgments will be confused and vague until history shall have been so reorganized as to exhibit the reality of the social process under the categories of content and function which we are beginning to find most significant. We shall not pass correct judgments upon the value of past actions until we can see, of every period worth considering, just how it co-operated with previous periods with respect to this process of unfolding, adjusting, and satisfying the cardinal human desires. Nor shall we be very expert in appraising alternatives of conduct in our own time until we can state to ourselves the problems of our time in terms of relation to this process.

#### XI. THE RELATIVE WORKING VALUE OF STATIC AND DYNAMIC CRITERIA OF CONDUCT

We recur to the claim already urged, that the best prospect in sight for a basis of common ethical belief is in connection with theoretical and practical gravitation toward the adoption of the fundamental sociology and ethics above outlined. It is not merely a theory of the sociologist that we should adopt this standard. It is a demonstrable psychological fact that men have always tended at least toward the use of this standard in all their ethical judgments. In the last resort we are forced to value as good whatever seems to us on the whole to promote the life-process; we are compelled to rate that as bad which seems to us on the whole to retard the process; that is, the sociological criterion of all conduct is identical in form with the psychology of conduct-judgments in general, namely, a measurement or estimate of its use in the life-process. The sociological criterion is merely an extension and generalization of the common man's way of judging whether a given effort is worth while or not. The narrowest individual judgment of conduct amounts to this: Will the effort give me more agreeable feeling? The sociological criterion amounts to this: Will the effort give more agreeable feeling to those who can trace its results farthest in the whole



social process? This is the sense in which Herbert Spencer's remark is true: "Ethics becomes nothing else than a definite account of the forms of conduct fitted to the associated state."<sup>14</sup> Mr. Spencer made the mistake of assuming a statical idea which the logic of the evolutionary conception properly excludes, namely, that a theory of an absolutely perfect condition is possible. Under the stimulus of the evolutionary conception, on the contrary, the psychologists and the sociologists are converging upon the interpretation that movement is the irreducible substance of everything. Status is only a convenient form of visualizing the changing. Permanent status is something of which we have no knowledge. Mr. Spencer partially realized his mistake and attempted to eliminate it from *Social Statics* when he republished it as *The Data of Ethics*. But he did not get rid of the fundamental assumption. The revolution which we have above predicted, as the effect of continued application of the psychological and sociological interpretation of life, is likely to be earliest manifest in undermining the systems of theory and practice which presume upon the statical conception. Until very recently, for example, practically all ethical systems have assumed, first, persons as fixed quantities, and, second, human relations as conditions which could be treated for ethical purposes as statical. These systems have then designated that man or that act as good that had such and such a relation to the stereotyped order of the world. In other words, our ethical theorists have assumed that life is like a bicycle of a standard model. It is made up of individual parts which may be displaced by duplicate parts that will fit as well as the originals into the machine. The duplicate parts are good when they are capable of such adjustment. Parts that refuse to assemble in the standard model are bad. It is a platitude, however, to declare that life is not like a machine of any type. It is somewhat more like the progression from the clumsiest velocipede to the latest type of bicycle, but this is also an extremely defective analogy, because the life-process is immanent, not mechanical. It is not a process that is put together as the machinist assembles parts of a machine from many sources; but movement as opposed to status is the idea for the illustration to convey.

Again, the good man or the good act is the one that facilitates human development at the precise point of contact with the main process. The same man or act might be bad at an earlier or later stage of the process, because incapable of adjustment with that stage. In brief, as we saw above, human good is not the good of rest in a permanent status, but of adaptation in a moving process. This being the case, our only hope of agreement about moral standards depends upon getting a sociology that will give us common insight into the details of the life-process. The question in point, when we try to gauge moral values is: Does this retard or promote the precise stage of the life-process in which it must function? This question must remain an enigma in the precise degree in which we lack a sociology adequate to interpret the life-process. At all events, the net result of psychological and sociological analysis for ethical pur-

<sup>14</sup> *Principles of Ethics*, sec. 48.



poses up to date is a certain quantum of detail in specification of this insight that the main situation is incessant movement, having no quality of rest, but consisting of a constant process, not in a straight line, but, taking large periods of time into the field of view, consistently toward something more of the process, which to our ken is interminable. This is the most far-sighted view of the main fact that we have reached, and it furnishes the positive basis of ethical presumption, in contrast with the speculative premises that have been accepted hitherto. This is the quasi-absolute standard of ethical value, which is the nearest practicable approach to finality.

## XII. SOCIAL DETAILS REQUISITE FOR APPLICATION OF THE DYNAMIC STANDARD

What has been said so far reduces to this: If we are to reach moral judgments that may appeal to science for sanction, we must first arrive at a tenable view of life in general. This will include, if our interpretation is correct, the reading of life in accordance with the categories which the sociologists find given in the social reality. We must have, second, as a kind of minor premise, an adequate survey of the social process in the concrete. The schedule below exhibits the groups of particulars which are necessary in order that we may form such an adequate conception of any past situation. Ability to survey a sufficient series of past situations in this completeness is not only requisite to comprehension of the situations themselves, but it is the necessary presumption of all generalizations of laws alleged to be exemplified in the passage of these situations into each other. That is, the ideal of history, on its descriptive side, would require that it should constitute an uninterrupted dissolving view of one situation following another, with constantly varied distribution of effort, both in quantity and quality, in the departments of activity to be specified. Then we must learn to interpret the existing situation in terms of the same categories. If we omit one or more of these phases of activity, our picture is a distorted account of the situation, whether past or present. The claims of the historians since Green, that they all occupy the sociological point of view, seem to the sociologists peculiarly naïve. The sociological point of view is something essentially different from a mere shifting of attention from the trifling doings of courts and camps to unassorted or uncritically assorted common-places about the masses. Having an adequate conception of the social process in general, the knowledge which we need in order to understand a particular situation includes the following:

1. A schedule of the sanitary and hygienic achievements and needs of the civilization; that is, the situation so far as it primarily concerns physical well-being.
2. A schedule of the economic achievements and needs of the period; that is, the situation so far as it primarily concerns human control of the resources of nature.
3. A schedule of the socializing achievements and needs of the period; that is, the situation so far as it primarily concerns the adjustment of social relations; in other

words, the current apportionment among individuals of access to the opportunities of nature and society.

4. A schedule of the scientific achievements and needs of the period; that is, the situation so far as it primarily concerns discovery of truth and degree of its dissemination among the people.

5. A schedule of the æsthetic achievements and needs of the civilization; that is, the situation so far as it primarily concerns artistic creation and appropriation.

6. A schedule of the ethical achievements and needs of the period; that is, the situation so far as it primarily concerns the intellectual and moral development of the population.

History is useful in proportion as it gives us these classes of facts in their actual concurrence and correlation. Most of this service is conspicuously not performed by history as yet. Until history renders this service it will continue to be a much overrated factor in human knowledge. Until we have an account of the present also, which will give to us the situation under the same heads, so that we can see the phenomena in their co-operation with each other, we cannot understand our own time and place. The immediate task of the sociologists is to make people, and especially the historians, see that they are dealing with meaningless scraps of social information until they co-operate to put all the scraps into an exhibit which will present to us the actual whole. Our present "scientific" social writers do not do this. One deals with the æsthetic element, and, while he had in mind something of the general facts of society when he started, he is soon lost in the artistic idea and the rest is gone. So with the economist. Adam Smith had in mind nearly, if not quite, all this, but his successors have spent their time on the economic fragment, and have forgotten the remaining contents of life. Like a great many disciples, they have learned only one fragment of their master, which practically vitiates the teaching of the master. He wanted to investigate all the divisions of life just as thoroughly as he investigated the economic division. Our social sciences in the nineteenth century have been provincial because they have not sufficiently looked at the other divisions of life, all of which are taken for granted, and are always involved in the conclusions of each. The sociologists today are sounding the alarm, and they demand that, while we continue to specialize, we must keep our vision from being so microscopic that we cannot see the whole.

Our judgments of social morality always presuppose an assumption about the whole social situation. We have need of a generally accepted assumption, conformed to the actual social fact, as the basis of a common ethic. The schedules just suggested would constitute a general survey of the real human process at the point where we have to deal with it, whether in the past or in the present. If we do not command these two preliminaries, our working moral judgments are merely mechanical applications of tradition, or they are wild guesses at relations which we do not understand.

Assuming, however, a general sociology, and a fairly adequate survey of the

present situation, the third process involved in a valid moral judgment is an estimate of uses; that is, we have to decide the functional value of this or that possible action in the working balance of the human process which the foregoing survey discovers.

No wonder that there is so little in common between the social agitator and the academic sociologist. The former is cock sure what things are going to the devil, and what things must be done this minute for social salvation. The latter realizes that the most intricate problem which the human mind ever confronts is the problem of antecedent and consequent, of cause and effect, in human society. It is impossible for him to be as sure about anything as the irresponsible ranter is about everything. The demands upon moral courage increase with every advance in our apprehension of the chances for error in human judgment. Life calls for decisions. It is sometimes the most fatal action not to act. In spite of the awful complexity of each problem, the sociologist must accept the responsibility at last of definite judgments about the conduct of life. The wider the field of his vision, the fewer people will he satisfy with his specific judgments, because he can convince himself only about general lines of effort. He knows that details must be worked out by others. Between the agitator and the academic theorist is the great social body. The mission of the thinker is so to work on the popular mind that everyday judgments of values will tend to correct themselves by ultimate standards. No sociological perspective is correct unless it turns out at last to have a place for the angle of vision which belongs to people at different posts in the social process. The distinct work of the philosophical sociologist is to organize the elements of social knowledge into a common property of social philosophy. The test of that philosophy must ultimately be its adequacy as the common presumption of all special theory.

### XIII. SOME ADDENDA TO THE ARGUMENT

It is possible that we have seemed to base our reasoning on a preposterous supposition. We may have appeared to assume that the average man may be expected to exploit the technique of psychology and ethics and sociology, and to reach his judgments of good and bad by rigidly scientific and logical methods. Nothing of the sort has been connoted by our thesis, but it has not been practicable so "rightly to divide the word of truth" that the phases of its application to specialists and laymen respectively could be sharply discriminated. In brief, however, the main proposition is this: The standard psychological form of all moral valuations, whether passed by babes or philosophers, is telic: when we pronounce a thing "good," we all alike do so because we believe it is good for something, it works well toward ends that we desire; psychological analysis of the content of supposed absolute criteria of moral values shows that this content necessarily consists of some reconstruction of human conditions; *i. e.*, the nearest we can get to a working absolute is our organization of what we know about the activities going forward in human experience; in other words,



however imposing the names with which we baptize our ultimate ethical standards, they cannot rise out of the same psychological rank with the standard of the plain man, viz.: How does it work in the conditions which I can consider? This being the case, the obligation rests upon the men whose function is to generalize methods of moral valuation, to stop juggling with absolute standards that are not absolute, and frankly to undertake the work of organizing knowledge of relative utilities into the largest philosophy of ends which our intelligence can construct. This is simply another way of saying that the psychology of moral judgment indicates the sociological interpretation of human activities as the ultimate available criterion of ethical goods.

The universal adoption of this criterion would not at once introduce unanimity of moral judgments. If we agreed as to the standard of obligation, we should still disagree as to whether the standard required the American government to declare its ultimate policy toward the Philippines, or whether the United States should control the isthmian canal, or whether the Bible should be read in the public schools, or whether our nation should enter into political alliances with other nations, or whether the church should become "institutional," or whether individuals should maintain this, that, or the other secession from the conventional order. The immediate change following such consensus would be essentially the adoption of a uniform intellectual attitude toward evidence pertinent to questions of ethical value. We are advertising no specific for the manifold moral maladies which betray themselves when we know the good and choose the bad. How knowledge of the good can be turned into choice of the good is a question quite independent of our present problem. We have been trying to show the general direction which our science must take in order better to satisfy the psychological conditions of progress toward agreement about the essential marks of ethical value. The process of human life as men know it is the implicit criterion of the good which all men tend to apply. The ethics that has the promise of final authority over the human mind is the ethics of all of the human process which men can know. The only maintainable scale of moral permissions and prohibitions is the scale of well- or ill-working of conduct in question, in larger and larger reaches of the human process.

But does not this statement itself assume that the ordinary man will have a social horizon and a degree of critical power which are impossible? Not at all. The methods of social pedagogy will doubtless remain for many generations substantially as they are now. The average man will get his moral judgments through conventional channels, but when the social criterion of ethical goods prevails, the average man will merely have to choose between alleged statements of fact, not between apparently irreconcilable principles for determining the value of the facts. If the average man today finds it to his advantage to join a secret society, and if the priest tells him it is the will of God that he should not join a secret society, the reconciliation is a problem of two unknown quantities. If the social criterion were frankly and directly applied



by both, instead of vaguely and unconsciously, the man and the priest might disagree as sharply as before, but the problem of arranging an agreement would now be an affair of only one unknown quantity instead of two.

Comparatively few of us understand the construction or the operation of the locomotive, or the telephone, or the dynamo. It is not at all certain that, if left to our own devices, we should always act in accordance with the best of our knowledge about these machines. This much, however, is certain. Practically everybody in civilized countries has a working conception that the principle of these machines is mechanical, not magical, nor miraculous, nor mystical. Everybody knows that, if an expert tells us we must act so and so toward the machines in order to get them to do their work, we should be very foolish not to follow his directions. This intellectual attitude toward machinery and mechanical authorities does not insure us against occasional silly behavior in handling machines, but we are surely better off, we act with more general consistency, we are more intelligent and docile about machinery, than we should be if some of us supposed, and all of us sometimes supposed, that machinery is a matter of magic or miracle or arbitrary supernatural decree. Our contention is that the like would be the case with reference to social conditions, if the largest attainable conception of the social process, and the discoverable laws of the social process, were made the universal norm of moral valuation.

Another objection may be anticipated, viz.: Is not all this merely another agnosticism? Our answer is most emphatically in the negative. The more comprehensive and circumstantial our knowledge of the finite, the more inevitably shall we need to rest our knowledge upon the postulate of the infinite. After individuals or societies have passed a certain stage of intellectual development, however, there occurs an irrevocable transposition of the infinite in their scheme of thought. The function of the infinite can no longer be either to reveal or to manipulate finite relations. It is henceforward to magnify the value of those relations. The real agnosticism is assumption that finite experiences have only finite values.

#### XIV. CONCLUSION

One cannot have made the foregoing argument in ignorance that to most minds it must seem a mere churning of words. It affects even rather mature students of social science, and almost invariably specialists in other departments, as a species of speculation for which one can have no serious respect without incurring suspicion of mental unbalance. Men attached to the traditions of the older social sciences, and still more men who have no use for any social doctrine except schemes of immediate reform, honestly believe that sociology is profitless refinement of academic distinctions. To this state of mind we must cheerfully respond: If sociology is profitless, by all means let it alone. Wisdom is justified of her children, but she is always compromised when the unwise claim her maternity. It would be a delightful clearing of the atmosphere if fewer people would call themselves sociologists, and more would absorb

a very little of the sociological spirit. Every man who has intelligence enough to deal with any portion of social science rationally, or with any part of social amelioration sanely, would be more rational and more sane and more effective if he would learn to place what he does within the larger perspective that sociology affords. There is always danger, to be sure, that reflection will turn Hotspurs into Hamlets. The philosopher may find so many things to think of that he can choose nothing to do. To that extent and in that sense, sociology, like all science and all philosophy, is a possible hindrance to action. On the other hand, action not sanctioned by science and philosophy is blind, and thought that stops short of the utmost comprehension of its object is partial. The people who are content with such thought and action invite the penalties of both weakness and vice. The profoundest and most comprehensive thought is not for everybody at first hand. But, while the world does not need many professional sociologists, it does need sociology. For weal or for woe we have arrived at a stage of life in which social gravitation is more and more arrested and deflected, and perhaps reversed by social theory. Men think today about social relations, and in the spirit of their thought they act. To do the right thing, except by accident, in any social situation we must rightly think the situation. We must think it not merely in itself, but in all its connections. Sociology aims to become the lens through which such insight may be possible. There must be credible sociologists in order that others may be valid economists and moralists, and that each of us may be an intelligent specialist at his particular post.



STUDIES CONCERNING ADRIAN IV.





## STUDIES CONCERNING ADRIAN IV.

OLIVER JOSEPH THATCHER

### I. THE OFFER OF IRELAND TO HENRY II.

*A review of the question.*—Among the many celebrated questions which have puzzled historians is to be numbered the one which is the subject of this article. Its discussion has been obscured and embittered by the hostilities engendered by differences in race, in nationality, and in religion. Although it has, almost from the beginning, had absolutely nothing to do with the practical question of the relation between England and Ireland, it has been discussed with all the intensity, not to say bitterness, of feeling that has grown out of the unhappy relations existing between those countries for the last seven hundred years. All things considered, it is not strange that the desire to know the exact historical truth has not always been the single motive of all those who have written on the question. Without in the least charging them with bad faith, it may be said that other considerations have sometimes had some influence on their attitude toward this matter. Irishmen, as Irishmen, in the spirit of high patriotism for which they have always been famed, have endeavored to defend the fair name of their island and people by declaring that the famous bull *Laudabiliter*, by which Pope Adrian IV. is said to have given Ireland to Henry II., is a forgery, abounding in slanderous falsehoods. As loyal Catholics, they have been unwilling to believe that a pope made himself a party to their misfortunes by delivering them into the hands of their enemy. They have, therefore, quite naturally sought in every way to discredit *Laudabiliter*. In this their belief that the bull is a forgery, they have found many supporters on the continent, in whom the same mixed motives may sometimes be discovered. Nor, on the other hand, can it be said that a single motive has influenced all those who have defended *Laudabiliter*. It is impossible not to see what we may call a certain Protestant satisfaction in attributing to a pope a share in the humiliation of Catholic Ireland in being subject to a foreign Protestant power. It is therefore not surprising that there is still the widest divergence of opinion on this question.

Father Stephen White, an Irishman and a Jesuit, whose approximate dates are 1573–1648, devoted many years of his life to a learned effort to prove that Adrian IV. did not give Ireland to Henry II., and that therefore *Laudabiliter* is a forgery and an aspersion on Ireland. Sommervogel, in his *Bibliothèque de la Compagnie de Jésus*, Vol. VIII, cols. 1093–8, gives a brief description of this learned man and of his works, most of which are still in manuscript. So far as I know, only one of his numerous writings has appeared in print. His *Apologia pro Hibernia* was edited and published by Rev. Matthew Kelly, in Dublin, 1849. At his death, his manuscripts, or at least

a part of them, fell into the hands of Father John Lynch,<sup>1</sup> who made free use of them in preparing his great work *Cambrensis Eversus*. This also was published with a translation and notes by Rev. Matthew Kelly, Dublin, 1848. As its title indicates, it is an attempt to destroy the credibility of Giraldus Cambrensis, or Gerald Barry, as he is often called. Giraldus was made the object of their common attack because in his work *De Expugnatione Hiberniae*, the first edition of which was written about 1188, he not only says that Adrian IV. gave Ireland to Henry II., and publishes for the first time the text of *Laudabiliter*, but he also justifies this gift by painting Ireland and the Irish in the blackest colors. To White and Lynch the best way to disprove the grant and *Laudabiliter* was to discredit Giraldus. Seen from the point of view of today this was unfortunate, because they thereby started the discussion along a way that could not lead to a sure conclusion, and they also introduced into the question a great many things that are entirely foreign to it. White and Lynch expended a vast amount of energy and learning in refuting Giraldus, a labor that has been made in part unnecessary by the critical judgments of his most recent editors.<sup>2</sup> But they failed to see, as many since their day have failed to see, that the question of the genuineness of *Laudabiliter* must be settled by other criteria.

The attack on *Laudabiliter* was continued in the eighteenth century by the Abbé MacGeoghegan, whose *History of Ireland* was translated and published by Patrick O'Kelly, Esq., in Dublin, 1844 (see pp. 238 ff.). Rev. John Lanigan, D.D., in his *Ecclesiastical History of Ireland*, Vol. IV, pp. 159 ff. (4 vols., Dublin, 1822), undertook to refute the arguments of the above-named writers, and asserted most confidently and positively that the bull is genuine, and that therefore Adrian IV. had actually made the grant to Henry II.

Since that day the literature on the subject has rapidly increased.<sup>3</sup> But in spite

<sup>1</sup> Lynch wrote under the pen name of Gratianus Lucius. In the Introduction to *Cambrensis Eversus* the editor says that on the surrender of Galway, 1652, Lynch fled to France. He probably lived for several years at Saint Malo, where he published *Cambrensis Eversus* in 1662. His death seems to have occurred about 1674.

For a special reason I wish to call attention to the two following passages: *Cambrensis Eversus*, Vol. II, p. 232: "Stephanus Vitus, cuius opera calamo tantum exarata, nec dum praelo commissa, penes me habeo, etc." Also *ibid.*, p. 394: "Vitus . . . penes se habuit vetustum coenobii Scotorum Ratisbonensis chronicon et ex eo quae e sua fore censebat excerptit, . . . Nunquam ego scriptum vidi anachronismis magis inquinatum, attamen e patris Viti apographo ea desumam quae, etc." From another passage we learn that this manuscript of the Irish monks at Regensburg contained the statement that Adrian IV., while a student at Paris, had had for his teacher an Irish monk named Marianus. As I am engaged in writing a life of Adrian IV., I wish, if possible, to find either the original manuscript or White's copy of it. I shall be greatly obliged to anyone who can give me any information about it.

<sup>2</sup> See *Giraldi Cambrensis Opera* edited by JAMES F. DIMOCK, Vol. V, pp. lxi ff. "The treatise [*De Expugnatione Hiberniae*] certainly is, in great measure, rather a poetical fiction than a prosaic truthful history" (p. lxxi).

<sup>3</sup> Besides the numerous works in which the question is discussed incidentally, a great many articles and books have been devoted exclusively to an investigation of it. Chief among these are the following: CARDINAL MORAN, "Adrian IV. and Ireland," *Irish Ecclesiastical Record*, 1872, pp. 62 ff.; also in *Australasian Catholic Record*, April-July, 1897; *contra*. "Adrien IV. et l'Irlande," two anonymous articles in *Analecta Juris Pontificii*, 1882, fascicules 185, 186; *contra*. F. A. GASQUET, "Adrian IV. and Ireland," *Dublin Review*, 1883; *contra*. S. MALONE, "Adrian IV. and Ireland," *ibid.*, 1884; also his "Adrian IV. and Ireland," Dublin, Gill & Son, 1899, pp. 106; *pro*. W. B. MORRIS, "Adrian IV. and Henry Plantagenet," three articles in *Irish Ecclesiastical Record*, 1885; also in his *Ireland and St. Patrick*, 1891; *contra*. B. JUNGEMANN, *Dissertationes Selectae*, Vol. V, pp. 213 ff.; *contra*. O. PFÜLE, "Papst Hadrian IV. und die Schenkung Irlands," *Stimmen aus Maria-Laach*, 1889; *pro*. A. BELLESHEIM, *Geschichte der Katholischen Kirche in Irland*, Vol. I, pp. 367, ff.; *contra*. PFLUGK-HARTTUNG, "Zwei Papstbriefe Gregors VII. und Hadrians IV. wegen Irland," *Brieger's Zeitschrift für Kirchengeschichte*, Vol. XIII (1892), pp. 107 ff.; also, "Drei Breven päpstlicher Machtfälle im 11ten und 12ten Jahrhundert," *Deutsche Zeitschrift für Geschichtswissenschaft*, Vol. X (1893), pp. 323 ff.; *contra*. KATE NORRIS, "The Bull *Laudabiliter*," *English Historical Review*, 1893, pp. 18 ff.; *pro*. L. GINNELL,

of the great learning and ability of those who have written on the subject, it seems that not much progress has been made toward the solution of the question. No agreement has been reached on the chief points at issue. Great ingenuity and cleverness have been expended in the discussion without reaching conclusions that are in the least convincing. Statement has been met by contradiction, and counter-statement by counter-contradiction. The same fact has been made to do service on both sides of the question, and what has been regarded by some as a certain proof of the genuineness of the bull has been looked upon by others as a conclusive evidence of its forgery. An amazing amount of material foreign to the question has been brought into the discussion. Many arguments have been advanced which have little or no bearing on the case, and in rebutting such arguments other material still less germane to the subject has been introduced. Every writer on the subject has felt that he must thresh over this material, and so the real and original question has often been lost sight of. Furthermore, there has been a radical error in one of their assumptions, which has consequently vitiated much of their reasoning. They have all, with the single exception of Mr. Round, assumed that the pope's grant of Ireland and the bull *Laudabiliter* must stand or fall together. Without any hesitation they have argued from the truth or falsity of the one to the truth or falsity of the other. Those who were persuaded that the bull is a forgery have, almost without further thought or argument and as a matter of course, concluded that the grant was never made. And on the other hand, those who believed in the existence of the grant have regarded as necessary the conclusion that *Laudabiliter* is genuine. I believe that this false assumption has been an effectual hindrance to the successful solution of the problem.

The method of attack, for investigation it cannot be called, pursued by Hergenröther, whose great learning was indisputable, seems worthy of special condemnation. He attacked the bull by many different lines of argument which were mutually destructive of each other, because one line of argument was based on a set of suppositions and interpretations that are contradictory to those on which another line of argument is based. But by each line he aimed to arrive at a greater or less degree of probability that the bull is a forgery. And then, as if such evidence were cumulative, he adds up all these probabilities and triumphantly concludes that the grant was never made and therefore the bull is a forgery. But surely two lines of argument based on contradictory assumptions cannot be held mutually to strengthen each other, nor is the probability arrived at by the one increased by the probability arrived at by the other.

*The Doubtful Grant of Ireland by Pope Adrian IV. to Henry II. Investigated*, 1899. The substance of this book had previously appeared in a series of articles in *New Ireland Review*; *contra*. RABY, *Pope Hadrian IV.*, 1849; *pro*. TARLETON, *Nicolas Breakspear, Englishman and Pope*, 1896; *pro*. L. C. CASARTELLI, "Adrian IV.," *Dublin Review*, January, 1902; *pro*. HERGENRÖTHER, *Kirche und Staat*, pp. 350 ff., and in his *Kirchengeschichte*, Vol. I, pp. 870 ff.; *contra*. DAMBERGER, "Hadrian IV. und Irland," *Der Katholik*, 1864; *contra*; the article is attributed to Dam-

berger, but it is signed S.; J. H. ROUND, "The Pope and the Conquest of Ireland," in his historical essays entitled *The Commune of London and Other Studies*, 1899; *contra*. Bagwell, *Ireland under the Tudors*, Vol. I, p. 37; *pro*.

I wish to acknowledge with pleasure and gratitude my indebtedness to Monsignor Giles, rector of the English College, and to Monsignor Murphy, rector of the Irish College, at Rome, for their kindness in granting me the free and frequent use of the college libraries, in one or the other of which I found nearly all the works here named.



This is a pernicious method, and all the more to be deplored because it is frequently employed.

It remained for Dr. F. Liebermann, in a brief note in the *Deutsche Zeitschrift für Geschichtswissenschaft*, 1892, Heft I, p. E 58, to point the way to a new and more profitable discussion of the question by declaring that, although *Laudabiliter* might be a forgery, he regarded the fact of the grant as indisputable. My lamented teacher and friend, the late Professor Paul Scheffer-Boichorst, had already come to the same conclusion. He published the results of his investigation in *Mittheilungen des Instituts für oesterreichische Geschichtsforschung*, IV. Ergänzungsband, 1893, pp. 101-22. His article bore the title, "Hat Papst Hadrian IV. zu Gunsten des englischen Königs über Irland verfügt?" His article was briefly noticed in the *English Historical Review*, Vol. IX (1894), p. 412, but it apparently escaped the notice of all the Englishmen and Irishmen who have since then written on the subject. Even Mr. Round seems to have known nothing of it, although an examination of it might have prevented him from falling into certain errors. Although later writers on the subject have made no reference to his work, his arguments seem to me irrefragable, his conclusions final. I have freely used his materials and arguments, as well as those of all who have written on the subject before me. I wish to acknowledge my indebtedness to them all, but especially to Professor Scheffer-Boichorst. By separating the question of the grant from that of *Laudabiliter*, many of the objections and arguments of previous writers fall to the ground of themselves. It has not seemed to me advisable to repeat their arguments in order to show just how they are refuted by the line of proof followed by Scheffer-Boichorst and which I have here amplified. The mere development of the arguments will, I hope, make it unnecessary to refute in detail all that previous writers have said in opposition to the conclusions here arrived at. To have indicated exactly where and by whom each argument, fact, or observation has been used, besides making this study unnecessarily long, would be not only unprofitable but also practically impossible. I have sometimes grouped the materials and arguments differently and, I hope, more effectively. I have also, I believe, in certain points carried the discussion farther and made some new combinations, especially in the discussion of the reasons why Henry II. rejected Adrian's offer. The discussion of the supposed letter of Henry II. to Adrian IV. is wholly my own.

*The question investigated.*— Since, as Dr. Liebermann pointed out, there are two distinct questions involved, it will be necessary to separate them and discuss each one of them on its own merits. It will be best, first of all, to discover, if we can, the exact character and extent of the negotiations which took place between Henry II. and Adrian IV. concerning Ireland. Such a method of procedure is the logical one and should clear the ground for the investigation of *Laudabiliter*. It is to be regretted that Mr. Round did not see fit to discuss this part of the problem also, instead of devoting himself exclusively to an examination of *Laudabiliter*.

We may begin with the testimony of Robertus de Torigneio, that chronicler who was most nearly contemporaneous with the event under discussion. We find that

this Robertus de Torigneio has the following entry in his chronicle under the year 1155:

Circa festum sancti Michaelis [September 29] Henricus rex Anglorum, habito concilio apud Wincestre, de conquiendo regno Hiberniae et Guillermo fratri suo dando cum obtimatibus suis tractavit. Quod quia matri eius Imperatrici non placuit, intermissa est ad tempus illa expeditio.<sup>4</sup>

Since this Robert died in 1186, his testimony is practically contemporaneous. Many mediæval chroniclers seem to have aimed at brevity more than any other quality. A year's campaign, even a whole war, a movement that extended through years, is often spoken of as if it were a simple event and dismissed in a single sentence. It need therefore not be inferred from this statement of Robert that the plan of conquering Ireland was not discussed at any other time, or that it was in this council at Winchester that the Empress Matilda dissuaded the king from the undertaking. In fact, the words seem to imply that the plan was, at least practically, agreed upon at Winchester, but that afterward, owing to the opposition of the empress, the expedition was postponed. At any rate, we know from other sources, soon to be quoted, that the king's mind was occupied with this matter for several months. However, there is no further mention of his brother William in connection with this scheme. But, while we have no corroborative evidence of this part of the plan here attributed to the king, there is no good reason for questioning the truth of the statement made by Robert.

We know that, instead of giving up the invasion of Ireland in the council at Winchester, the king proceeded immediately to send an embassy to the pope, Adrian IV., to ask the consent of his holiness to the proposed undertaking. In proof of this, Roger de Wendover (died 1236), who used as the basis for his chronicle the work of John of the Cell (abbot of St. Albans, 1195-1214), has the following passage: "Per idem tempus rex Anglorum Henricus nuntios solemnes Romam mittens rogavit papam Adrianum ut sibi liceret Hiberniae insulam hostiliter intrare et terram subjugare," etc. (*Rerum Britannicarum Medii Aevi Scriptores*, Roger de Wendover, Vol. I, p. 11.)

Matthew of Paris, monk of St. Albans, copied the work of Roger de Wendover, but made many additions to it from the archives of his monastery, to which he had access. In his *Chronica Maiora*, Vol. II, pp. 210 f., he has merely copied Roger's account, but elsewhere he has given us new and important information about this embassy. In his *Historia Minor*, Vol. I, p. 304, he says that Henry sent to the pope to ask "ut sibi liceret sine scandalo laesionis fidei Christianae Hiberniae insulam intrare," etc. Further, in his *Vitæ XXIII. Abbatum S. Albani* (Wats's edition, 1684, pp. 969 ff.), the same author gives a long account of this embassy to the pope, from which I quote the following passage:

Audita igitur apud nos promotione domini papae Adriani, exultans, Robertus abbas, ad reparandas huius ecclesiae antiquas dignitates, ad iter transalpinum accingitur; equos praeparat, impensas perquirat, exenia congregat, quae ad pretium septies viginti marcarum (praeter cyphos quinque et mitras tres pretiosissimas et sandalia, et alia desiderabilia) sunt aestimata. Die igitur

<sup>4</sup> See MIGNE, *Patrologia Latina*, Vol. CLXIX, col. 480; also *M. G. H.*, Vol. VI, p. 505. Both HEFELE, *Concilien-*

*geschichte*, Vol. V<sup>2</sup>, pp. 682 f., and SCHEFFER-BOICHORST have emphasized the importance of this passage.

S. Dionysii [October 9] iter arripuit Romam petiturus, illius comitatu adhaerentibus tribus episcopis Caenomanensi, Luxoviensi, et Ebroicensi. Dederat namque in mandatis rex Henricus secundus, noviter inunctus, ipsis episcopis et eidem abbati Roberto quatenus *quaedam ardua negotia regalia*, de quibus non pertinet ut enarremus ad praesens, Romae expedirent. Constituit etiam rex ipsum abbatem sui negotii suum procuratorem praecipuum et summum et confecit eis inde litteras regio sigillo signatas. In quibus humiliter et devote dominum papam deprecatus est ut se favorabilem tam negotiis ecclesiae S. Albani quam suis propriis exhiberet, utpote patrocinator ipsius specialiter subiacentis. Recedentes igitur ab Anglia naves conscendunt. Intumescente autem mari imminet periculum iam demersionis. Abbas autem specialiter invocans auxilium b. Margaritae, virginis et martyris, repentinum et contra omnium opinionem sensit in naufragio suffragium. Unde vovit quod in ecclesia nomen eius in litania poneretur propensius honorandum. Prospere igitur applicantes et postea itinerantes et multas latronum insidias evadentes, tandem Beneventum ubi dominum papam inveniunt, pervenerunt. Qui eos sereno vultu et animo gaudenti suscepit, et insolitum honorem exhibuit. Expediunt regalia pro libitu negotia. Remanente igitur abbate, recedunt episcopi regi favorem papalem et diligentiam abbatis renunciantes. Dominus enim papa amicabiliter coegit abbatem remanere, ut propensius cum ipso colloquium continuaret, et eiusdem moram versus regem per episcopos excusavit.

The council at Winchester was held about September 29, 1155, and this embassy set out to go to the pope on October 9 of the same year. The nearness in time and the statements of the chroniclers just considered lead one to the inference that one of the "*ardua negotia regalia*" had to do with the proposed invasion of Ireland. But there was a good reason why Matthew of Paris did not wish to mention this fact: the embassy had failed to get the pope's consent to the invasion. This was probably apparent from the records of the monastery from which Matthew drew the materials for his narrative just quoted. At any rate, he knew from the statement of John of Salisbury that the embassy had not been successful. For nearly one hundred years the world had known that it was John of Salisbury who had secured whatever concession of Ireland Adrian IV. had made to Henry II., because John himself had published this fact in one of his writings, as we may say, over his own signature. So, if Matthew of Paris had named the exact purpose of the embassy, the failure of his abbot would thereby have become apparent to all. That would have been to publish the humiliation of his abbot who failed in a matter in which John of Salisbury so easily succeeded. I wish to remark that Matthew of Paris shared the erroneous opinion of his time as to the importance of the so-called grant of Adrian IV., and would have been glad to add to the honor of his monastery by making it appear that it was its abbot who had been the successful ambassador of King Henry in this matter. But the well-known statement of John of Salisbury made this impossible. Matthew, therefore, as we have seen, deals only in generalities when speaking of the business on which the embassy was sent.

The ambassadors set out on their journey on October 9, 1155. While crossing the channel a storm overtook them. They barely escaped shipwreck. Scheffer-Boichorst says they were shipwrecked, but I question that interpretation of Matthew's words, all the more because the horses and the presents for the pope were apparently got ashore without loss or damage, as is to be inferred from Matthew's further account.



Besides, in the Middle Age, people lived in an atmosphere of miracle, and it is a characteristic of mediæval writers that they exaggerate nearly every event, which seemed to them extraordinary, into a miracle. The pious desire to do honor to some saint was not the least of the motives which led them to make exaggerated statements about such occurrences. The impelling motives here seem to me to be apparent; Matthew wished to do honor to St. Margaret as well as to heighten the dignity of the abbot of St. Alban's, by showing how he had been the object of St. Margaret's solicitous care. The journey by land was not less free from exciting experiences, but the ambassadors safely reached Benevento, where Adrian IV. was then residing. From his bulls and letters we know that Adrian held his court at Benevento from November 21, 1155, to July 10, 1156.

We have an independent and unimpeachable witness to the fact that the king sent this embassy. It is no less a person than Adrian IV. himself. On April 25, 1156, he wrote to the chapter of the cathedral at Angers announcing his decision in a case that had been appealed to him by the king of England. This letter has been edited by Loewenfeld. That part of it which concerns us is as follows:

Adrianus Episcopus, servus servorum Dei, dilectis filiis universo capitulo Andegavensi salutem et apostolicam benedictionem. Causa super controversia de electione pontificis per appellationem karissimi in Christo filii nostri regis Anglorum ad presentiam nostram delata, et quibusdam de fratribus vestris pro eodem negotio ex vestra parte directis, venerabilibus quoque fratribus nostris R(otrodo) Ebrouicensi et G(uillelmo) Cenomanensi episcopis et dilectis filiis nostris R(oberto) abbate S. Albini et G. decano S. Laudi ab eodem rege transmissis, in nostra presentia constitutis, utriusque partis allegationes audivimus, etc. Datum Beneventi VII. Kal. Maii.

From this letter it does not necessarily follow that these men, or indeed that any one of them, were in Benevento on the date of the letter, April 25, 1156. We know from official documents that Arnulf of Lisieux was at Rouen<sup>5</sup> in February, 1156. From *Gallia Christiana*, Vol. XI, p. 577, we learn that Rotrodus<sup>6</sup> celebrated Easter, 1156 (April 15), at Vezelay. Since Vezelay lay on the route from Rome to Evreux, it is probable that Rotrodus, returning from the embassy, reached Vezelay at Easter time. I have not been able to verify this statement of the authors of *Gallia Christiana* or to trace the movements of William of LeMans. But Matthew of Paris was undoubtedly well informed about the movements of the bishops.

We may now reconstruct the course of events as follows: The ambassadors of the king brought the appeal before the pope after the departure of Arnulf of Lisieux. After hearing both sides, the pope reserved his decision for a few days. In the meantime, the other bishops, or at least Rotrodus of Evreux, left Benevento. Even after the pope announced his decision it is not probable that the letter to the chapter at Angers was sent off at once. The papal secretaries were not always prompt, and several days may have elapsed before the letter was drawn up and duly signed. The date was the last thing to be added, and was naturally not the date of the trial, but of

<sup>5</sup> See EYTON, *Court, Household, and Itinerary of King Henry*, 16, Nr. 1, 2.

<sup>6</sup> "Roma rediens pascha apud Vizeliacum celebravit anno 1156."



the dispatching of the letter. Even Abbot Robert may not have been in Benevento on that day. If he was still there, he certainly set out for home very soon afterward, for he reached St. Albans May 31, the octave of Ascension Day.

Matthew of Paris had, as we have seen, a good reason for not being explicit in his statements about the success of the embassy in the affairs of the king. "*Expediunt regalia pro libitu negotia.*" The bishops' return, "*regi favorem papalem et diligentiam abbatis renunciantes,*" announcing the pope's favor, not his consent; the diligence of the abbot, not his success. So weak a statement, coming from a panegyrist, as Matthew of Paris confessedly was, would indicate little less than failure in the most important business of the embassy. In all other matters entrusted to the embassy, and they were, no doubt, many, the abbot may have been very successful. But the embassy certainly failed to secure the desired consent of the pope. We do not know what all the terms of the king's proposition were. The letter which contained his request has been lost and none of the ambassadors has recorded its contents for us. But if we consider the expressions just quoted from Roger de Wendover, "*hostiliter intrare et terram subiugare,*" and from Matthew of Paris, "*ut sibi liceret sine scandalo laesionis fidei Christianae Hiberniae insulam intrare,*" we must, I think, conclude that Henry wished to conquer Ireland and to take absolute possession of it. By the right of conquest he desired to make it his own, we might almost say, his private and personal property. But there were weighty reasons why Adrian IV. could not grant this request.

Mediaeval rulers regarded it as a part of their duties to make war on any of the neighboring peoples who were still heathen, not only for the purpose of conquering them, but also and especially to Christianize them. But when such a people had once accepted Christianity and received an ecclesiastical organization, it came under the particular protection of the pope and therefore could not be subjugated and absorbed by another Christian power. A heathen nation was the common prey of all its Christian neighbors, but the acceptance of Christianity gave it the right to a separate independent national existence. And Ireland was already Christian, and therefore could not arbitrarily be invaded and subjugated by another Christian nation, *sine scandalo laesionis fidei Christianae*. Only three years before this Cardinal Paparo had been sent as papal legate to Ireland. He held a synod at Mellifont,<sup>7</sup> 1152, in which he erected four archbishoprics in Ireland and gave the pallia to the four ecclesiastics who were elevated to these archiepiscopal sees. So, just as William the Conqueror had sought and obtained the permission and blessing of Alexander II. for his projected invasion of England, Henry II. applied to Adrian IV. for permission to subjugate Ireland. And not only was Ireland Christian; Adrian regarded it as the property of St. Peter, and therefore he could not permit Henry to invade it and take possession of it. So it is not strange that this embassy failed to win the pope's consent to the proposed plan.

The pope would not consent to diminish the possessions of St. Peter by ceding

<sup>7</sup> See MANSI, Vol. XXI, cols. 760-70, and HEFELE, Vol. V, 2d ed., pp. 531 f.

the absolute possession of Ireland to Henry. And yet, in accordance with feudal customs, he might, under circumstances, be willing to grant Henry the use of Ireland, that is, to give him the feudal possession of it. But there was a vast difference between *feudal* possession and *absolute* possession. Henry had asked for the absolute, not for the feudal possession, of the island. But the pope, at the suggestion of his most intimate friend, John of Salisbury, determined to offer him Ireland as a feudal possession. This offer may be regarded as in the nature of a compromise.

John of Salisbury, in his *Polycraticus*, Bk. VI, p. 24 (Migne, Vol. CXCI, col. 623), gives a long account of a visit which he made the pope at Benevento. Giraldus Cambrensis, apparently drawing a false inference from John's words, says that he went as the king's ambassador in this matter; "*per Johannem Salesberiensem . . . Romam ad hoc destinatum.*" Others have unthinkingly copied this statement, but Abbé MacGeoghehan and Scheffer-Boichorst have called attention to the fact that John does not say that he was the king's ambassador. He went for the purpose of visiting<sup>8</sup> his friend, the pope. He spent three months in Benevento in the most familiar intercourse with Adrian. He certainly met Abbot Robert there, as is apparent from a consideration of the dates given above. The abbot, having failed to win the pope's consent, confided his failure to John, who, with a good and justifiable motive, as we shall see, proposed a way out of the difficulty.

The passage in which John tells how he secured the grant has been much written about. But first a word must be said about the text of it. Giles, in his edition of the works of John of Salisbury, did not always use the best manuscripts and was not sufficiently exact in deciphering and establishing the text. Migne (Vol. CXCI) and Pauli (*M. G. SS.*, Vol. XXVII) have merely reprinted the text of Giles. From the character of the *Monumenta* we had the right to expect something more than a mere reprint. But we look in vain for any evidence that Pauli tried to improve the work of Giles.<sup>9</sup> Dr. F. Liebermann, at the request of Scheffer-Boichorst, collated the passage in three manuscripts, one of the twelfth and two of the thirteenth century.<sup>10</sup> The text, as established by this collation and edited by Scheffer-Boichorst, is as follows:

Sed hec hactenus. Jam enim flere magis vacat, quam scribere, et visibili argumento doceor, quod mundus totus *subiacet vanitati*.<sup>11</sup> *Expectavimus enim pacem et ecce turbatio*<sup>12</sup> *et tempestas ingruens*<sup>13</sup> Tolosanis Anglos et Gallos undique concitat, et reges, quos amicissimos vidimus, se insaciabiliter persequuntur. Ad hec mors domni Adriani, summi pontificis, cum omnes Christiane religiones *populos nationesque*<sup>14</sup> turbaverit, Angliam nostram, unde fuerat

<sup>8</sup> *Visitandi causa*. Scheffer-Boichorst says that they had been friends in youth: "um seinem Jugendfreunde und Landsmanne, dem Papste, einen Besuch abzustatten." Although I think this extremely probable, I do not recall any authority for the statement.

<sup>9</sup> Scheffer-Boichorst, indeed, makes the statement that Pauli did not collate a single manuscript for what we must therefore call his reprint.

<sup>10</sup> Brit. Mus. Reg. 13 D. IV, fol. 208; cf. CASLEY, *Catal.*

of the Mss. in the King's Library, p. 226; Brit. Mus. Reg. 12 D. I.; cf. CASLEY, p. 205; Corpus Christi Cambridge Cod. 46; cf. NASMITH, *Catal. Lib. Mss. Coll. Corp. Christi Cantab.*, p. 30; cf. SCHEFFER-BOICHORST, *loc. cit.*, pp. 103 f.

<sup>11</sup> Eccles. 3:19.

<sup>12</sup> Jere. 14:19.

<sup>13</sup> Prov. 1:27.

<sup>14</sup> Cf. *Sup.*, V, 9.

oriundus, acerbiori dolore commovit irrigavitque lacrimis profusioribus. Omnibus *ille bonis flebilis occidit, sed nulli flebilior, quam mihi*.<sup>15</sup> Cum enim matrem haberet et fratrem uterinum, me, quam illos, artiori diligebat affectu; fatebatur etiam publice et secreto, quia me pre omnibus mortalibus diligebat. Eam de me conceperat opinionem, ut quotiens oportunitas aderat, conscientiam suam in conspectu meo effundere letaretur. Et cum Romanus pontifex esset, me in propria mensa gaudebat habere convivam et eundem ciphum et discum sibi et mihi volebat et faciebat, me renitente, esse communem. Ad preces meas illustri regi Anglorum Henrico secundo concessit et dedit Hiberniam iure hereditario possidendam, sicut littere ipsius testantur in hodiernum diem. Nam omnes insule de iure antiquo ex donacione Constantini, qui eam fundavit et dotavit, dicuntur ad Romanam ecclesiam pertinere. Anulum quoque per me transmisit aureum, smaragdo optimo decoratum, quo fieret investitura iuris in regenda Hibernia. Idemque adhuc anulus in cimiliarchio publico iussus est custodiri. Si virtutes eius percurrere velim, in magni voluminis librum hec una excrescet materia. Omnium vero mentes magis exulcerat scissura ecclesie, que exigentibus culpis nostris contigit, tanto patre sublato. *Expe-tivit eam Sathanas, ut cribraret sicut triticum*<sup>16</sup> et undique alterius Jude proditoris ministerio amaritudines et scandala spargit. Oriuntur *bella plus quam civilia*,<sup>17</sup> etc.

Practically all who have written against the genuineness of *Laudabiliter* have declared this passage a forgery, however, on insufficient grounds. The following facts and considerations seem to me to refute all the objections that have been raised against it, and to make its authorship a certainty. In the first place, this passage is found in all the manuscripts of *Metalogicus*. We search in vain for any evidence in the written tradition that it was not a part of the original manuscript. And since *Metalogicus* was completed in 1159 (or at the very latest in 1160), and since there is one manuscript of it now in existence which was certainly written some time before 1200 (possibly as early as 1175), the argument from the written tradition, that is, from the manuscripts of *Metalogicus*, must therefore have very great weight, and that clearly points to John of Salisbury as the author of the whole work.

Furthermore, John's style is characterized by very numerous citations from the Bible and from classical authors. He was one of the few men of the twelfth century who were thoroughly familiar with the classical writers. He really deserves to be regarded as one of the earliest and most important forerunners of the Renaissance, and for literary attainments he can be boldly placed by the side of many of the Humanists.<sup>18</sup> In the brief passage here cited there are not less than four or five quotations from the Bible and two from classical authors. This is unique and so thoroughly in keeping with his style that it alone almost suffices to prove that he is the author of it.

Then, too, the reference to the war between Louis VII. and Henry II., who were then facing each other before Toulouse, fits into the facts perfectly. For the English king was engaged in hostilities there from June 25, 1159, to November 1 of the same year. And Adrian IV. died September 1. The news of his death reached John just as he was completing his *Metalogicus*, certainly toward the end of September or early in October. And John penned this passage before he learned of the establishment of

<sup>15</sup> HORACE, *Odes*, I, 24, line 9.

<sup>16</sup> LUKE 22:31.

<sup>17</sup> LUCAN, *Pharsalia*, I, 1.

<sup>18</sup> See SCHAARSCHMIDT, *Johannes Saresberiensis nach Leben und Studien, Schriften und Philosophie*, also VOIGT, *Die Wiederbelebung des classischen Alterthums*, Vol. I, 2d ed., p. 6.



peace between the two kings, which took place November 1. Such casual agreement with historical facts seems to me decisive. To have produced such harmony in the details would imply a degree of skill and cleverness that is otherwise lacking in mediæval forgers.

Equally impossible is the supposition that it would have occurred to a forger to invent such unique details about the intimacy between Adrian IV. and John. And such intimacy is not at all incredible. Remember that Adrian was an Englishman in a foreign land, among a people of a different race and nationality, among a people whom he did not admire, among a people who, by their insistent selfishness, their turbulent demands, their violence and rebellion, greatly increased the already awful burden of his sublime office. At the time of John's visit he had been pope but little more than a year. But what a terrible year it had been for him! Driven from Rome by a rebellion accompanied by war and bloodshed; the lands of the church invaded and devastated by William of Sicily, against whom he could find no aid; at that very moment in danger of being taken a prisoner of war by the troops of the Sicilian, who were advancing in victorious progress toward Benevento; disappointed in the hopes which he had placed on Frederick I., who was powerless to protect him; the college of cardinals divided on the most important questions of policy into two parties. As he himself said, the Lord had kept him continually between the hammer and anvil. Is it strange that under these circumstances his heart cried out for sympathy? One has but to read the undisputed accounts which John<sup>19</sup> has given us of his private conversations with Adrian to see what a solitude oppressed the pope's soul. The solitariness of his supreme position and unique office was increased and made more dreary by the isolation which he, as an Englishman, felt among Italians. Was it not enough to make his soul cleave to that of his friend who was of his own race and therefore better able to understand him? These few words of John give us a view of the inmost soul of Adrian which to me is beyond price.<sup>20</sup>

As a convincing proof of the forgery of this passage much has been made of the expression *in hodiernum diem* (for this is the correct text and not *usque in* nor *usque ad hodiernum diem*), which, it is said, could not be used by a writer of an event so recent. For the gift was made in 1155 and John finished his *Metalogicus* toward the end of 1159. But *in hodiernum diem* is not as emphatic as *usque in* would be. It should be translated simply "As his letter still testifies," and not "even unto the present day." John says no more than that Adrian's letter is still in existence, a fact that was all the more remarkable in his eyes because, as we shall see, the terms of the letter had never been fulfilled, and the letter itself was therefore without value and not worth being preserved.

The fact that John appeals to the forged *Donation of Constantine* has been regarded as a sufficient ground for rejecting this passage. But we have abundant

<sup>19</sup> *Polycraticus*, Bk. VI, p. 24, and Bk. VIII, p. 23; MIGNE, Vol. CXCIII, cols. 623-6, and cols. 813, 814. See also John's letter to Walter, cardinal Bishop of Albano, *Materials for the History of Thomas Becket*, Vol. VI, p. 363.

<sup>20</sup> I reserve a fuller description of these difficulties which beset Adrian IV. and a more detailed discussion of these passages of John of Salisbury for my work on the life of Adrian.



evidence that this famous document was generally known and, relatively speaking, not infrequently used by popes as well as by chroniclers.<sup>21</sup> Of course, the *Donation of Constantine* does not say that Constantine gave all islands to the pope, but only certain possessions in various countries and islands for the support of the lights in the churches. I regret that, not having the better text of Zeumer at hand, I cannot quote from it. Here is the passage:

Quibus pro concignatione luminariorum possessionum praedia contulimus et rebus diversis eas ditavimus, et per nostram imperialem iussionem sacram tam in Oriente quam in Occidente vel etiam septentrionali et meridiana plaga, videlicet in Iudea, Gretia, Asia, Tracia, Africa, et Italia, vel diversis insulis nostra largitate eis concessimus, ea prorsus ratione ut per manus beatissimi Silvestri pontificis successorumque omnia disponantur. (Hinschius, *Decretales Pseudo-Isidorianae*, p. 253, and *Mansi*, Vol. II, pp. 603 ff.)

But the exact meaning of the *Donation* was soon forgotten, and it came to be believed that, according to the terms of the *Donation*, Constantine had given all islands to Pope Silvester. And it was this larger interpretation of the *Donation* which prevailed.

That various popes knew, believed in, and made use of this interpretation of the *Donation* there can be no doubt, as will be clearly evident from an examination of the following quotations from papal writings and official documents.

Waiving the question whether Adrian I (772-95) quoted the *Donation*, we come to Leo IX., who twice made use of it. In his letter (*anno* 1053) to Michael Caerularius there is the following passage:

Tantum apicem coelestis dignitatis in b. Petro et in suis vicariis prudentissimus terrenae monarchiae princeps Constantinus intima consideratione reveritus, cunctos usque in finem saeculi successuros eidem apostolo in Romana sede pontifices, per b. Silvestrum non solum imperiali potestate et dignitate, verum etiam infulis et ministris adornavit imperialibus, valde indignum fore arbitratus terreno imperio subdi quos divina maiestas praefecit coelesti, etc. (Migne, Vol. CXLIII, col. 752.)

In his letter to the emperor, Constantine Monomachus, Leo IX. twice refers to the *Donation* in terms no less explicit (Migne, Vol. CXLIII, cols. 778-80).

Gregory VII. did not quote the *Donation*, although it would seem, at first sight, to support his claims of universal sovereignty. But it evidently did not serve his purpose to quote it because he attributed all the authority of the church to the direct gift of God, and not to the favor of the emperor. The *Dictatus Papae*, which was once attributed to him, is now known to have been drawn from the collection of canons

<sup>21</sup> The best discussions of the *Donation of Constantine* are the following: HAUCK, *Luthardt's Zeitschrift für kirchliche Wissenschaft u. kirchliches Leben*, 1888, p. 201 ff.; FRIEDRICH, *Die Constantinische Schenkung*, 1889; MARTENS, *Die falsche General-Concession Constantin des Grossen*, 1889; LAMPRECHT, *Römische Frage v. K. Pippin b. a. Kaiser Ludwig d. Frommen*, 1889; WIELAND, *Zeitschrift für Kirchenrecht*, Vol. XXII, pp. 185 ff.; ZEUMER UND BRUNNER, *Festgabe für Gneist*, 1888; HERGENRÖTHER, *Kirche u. Staat*, pp. 360 ff.; DÖLLINGER, *Papstfabeln des Mittelalters*, pp. 61 ff.; SCHERFER-BOICHOEST, *M. I. O. G.*, Vol. X pp. 302 ff., and Vol. XI, pp. 128 ff.

In writings other than papal traces of the use of the legend are found in the *Vita Hadriani I.*, written early in the ninth century, and in the synod of Aachen, 836. It is quoted by the following authors: Aeneas, bishop of Paris, died 870 (MIGNE, Vol. CXXI, col. 758); Ado, archbishop of Vienna, died 875 (*ibid.*, Vol. CXXIII, col. 91); Liutprand of Cremona, died 970 (*M. G. SS.*, Vol. III, pp. 350 f., 358, 362); Benedict of St. Andrea (*ibid.*, p. 699); Ermoldus Nigellus (*ibid.*, Vol. II, p. 506); Petrus Damianus (*Libelli de Lite*, Vol. I, p. 80); Auctor Gallicus (*ibid.*, p. 12). This list could easily be extended if necessary.

made by Cardinal Deusdedit. The eighth paragraph of the *Dictatus*, "*quod papa solus possit uti imperialibus insigniis*," is certainly based on the *Donation*.

With the pontificate of Urban II. (1088-99) the *Donation*, as Döllinger correctly observes, entered on a new phase of its history. An enlarged interpretation and a new legal basis were given it, as will be apparent from a consideration of the two following documents:

Urbanus Episcopus s. s. Dei dilecto fratri Ambrosio abbati Liparitano, eiusque successoribus regulariter substituendis in perpetuum. *Cum universae insulae secundum instituta regalia iuris publici sint, constat profecto quia religiosi Imperatoris Constantini privilegio in ius proprium b. Petro eiusque successoribus occidentales omnes insulae condonatae sunt, maxime quae circa Italiae oram habentur, quarum multae, peccatis exigentibus accolarum, a Saracenis captae, Christiani nominis gloriam amiserunt, etc.* (Pirri, *Sicilia Sacra*, 3d ed., p. 952.)

It bears the date of June 3, 1091. The second document of Urban II. begins as follows:

Urbanus E. s. s. D. d. f. Daiberto Pisanorum episcopo eiusque successoribus canonice substituendis in perpetuum. *Cum omnes insulae secundum statuta legalia iuris publici habeantur, constat etiam eas religiosi Imperatoris Constantini liberalitate ac privilegio in b. Petri vicariorumque eius ius proprium esse collocatas, etc.* Datum Beneventi IV. Kal. Julii, MXCI. (See Ughelli, *Italia Sacra*, Vol. III, col. 369.)

This is not the place to follow out the history of the *Donation* in later times, but it may be interesting to add the famous lines of Dante, which will show us how great importance the poet attached to it:

Ahi, Constantin, di quanto mal fu matre,  
Non la tua conversion, ma quella dote  
Che da te prese il primo ricco patre.

—*Inferno*, XIX., 115 ff.

These bulls of Urban II., the originals of which are preserved, are shown to be genuine by every test that can be applied to them; hence all the objections that have been made against them fall to the ground. We have only to concern ourselves here with the meaning of them. The following statement, I believe, adequately expresses the sense of the two documents:

According to the law of the Roman empire all islands belonged to the public fiscus, or, as we might now say, they were government property. And since it was assumed that the emperor might dispose of such property as he saw fit, it is, therefore, evident that, by the grant of Constantine, all such islands are now the freehold possession, *ius proprium*, of St. Peter, and are consequently under the absolute control of the reigning pope. By virtue of his sovereignty over the islands Urban II. actually gave Corsica to the bishop of Pisa and the Lipari islands to Abbot Ambrosius.

There are here in these documents two things that are new: first, the statement that all western islands belong to St. Peter, and, secondly, the legal basis on which this possession rests, namely, because by Roman law they had been a part of the public domain. With the genesis of these new ideas we have nothing to do at present.

In the light of the above passages, it would be idle to deny that popes made use of the *Donation of Constantine* during the Middle Age, and no objection can be made to the genuineness of the passage in the *Metalogicus* or to the recorded action of Adrian IV. because John of Salisbury cites the *Donation*. John's statement agrees explicitly with the conception expressed in the bulls of Urban II., and it may be asserted with certitude that Adrian IV. believed that Ireland was under his control because, being an island, it was a freehold or allodial possession of St. Peter.

To sum up, we may therefore confidently accept the passage in *Metalogicus* as genuine, because, first, it is not in the least discredited by any of its contents, such as the statements about the remarkable intimacy between Adrian IV. and John of Salisbury, the expression *in hodiernum diem*, or the reference to the *Donation of Constantine*; because, secondly, all the evidence to be obtained from the manuscripts in which it is preserved goes to show that it was contained in the original manuscript; because, thirdly, it is thoroughly in the style of John, being in a unique way characterized by quotations from classical Latin writers; and because, lastly, it is corroborated by agreeing in the most casual and convincing manner with the historical situation and facts otherwise known and vouched for.

We may now pass to the interpretation of the passage in *Metalogicus* in order to determine the character of the grant offered by Adrian to Henry II.: "Regi Henrico . . . concessit et dedit Hiberniam iure hereditario possidendam . . . anulum transmisit . . . quo fieret investitura iuris in regenda Hibernia."

In the first place, it is evident that we have before us a feudal grant. Henry II. is to be invested only with the *ius in regenda Hibernia*, that is, with the government of Ireland. He is to become the feudal lord of Ireland and Ireland is to become his fief. As a possession, therefore, it still belongs to St. Peter. Secondly, whatever is, by this investiture, given to Henry, is given not simply to him personally and for his lifetime, but also to his heir, *iure hereditario*.

But it has been objected that *concessit et dedit* could not be used for the granting of a fief, because they denote rather a gift; there is therefore, it is said, a serious contradiction in the statement of John of Salisbury. But one needs only to turn to the official documents of that period by which fiefs were granted on similar terms, to find that *concessit et dedit* are used constantly in the granting of fiefs. Let the following examples suffice as proof of the statement. *Damus et concedimus in feudum* occurs in a document quoted by Ficker, *Studien zur Reichs- und Rechtsgeschichte Italiens*, Vol. I, p. 237, § 124. Also in § 137 there are several passages containing the same words. In a document of Conrad III., anno 1142, to be found in Böhmer, *Acta Imperii Inedita*, p. 79, we find *in beneficium dedimus*. In the same work, p. 158, we find, "Civitatem Sutrium cum toto episcopatu et comitatu suo *damus concedimus et nomine recti feodi in perpetuum* tenenda confirmavimus." That this technical formula was not unknown to the papal secretaries is proved by the fact that Anaclete II. used it in the document by which he granted the lands of southern Italy as a fief to King Roger, 1130, September 27. "*Concedimus igitur et donamus et auctorizamus tibi et*



filio tuo . . . . coronam regni," etc. The terms of the grant are given a little later. "Has nostras concessionones sic *concedimus tradimus et auctorizamus* tibi et tuis filiis habenda et possidenda *iure perpetuo dum nobis nostrisque successoribus homagium et fidelitatem* . . . . *facies vel facient, iuraveris vel iuraverint*," etc. Watterich, *Pontificum Romanorum Vitae*, Vol. II, p. 194.<sup>22</sup>

I may remark in passing that it had long been the fixed policy of all the popes to enlarge the possessions of St. Peter, not to diminish them. Adrian IV., his biographer tells us, vigorously pursued the same policy. To diminish the patrimony of St. Peter by giving away so large a possession as Ireland was would have been without parallel in the history of the period, and could have been justified only by the receipt of the largest and most solid advantages for the Church in return. And even granting that Adrian might have wished to make the gift (for which there is no evidence; indeed he refused Henry's request) it is not at all probable that he could have got the consent of the college of cardinals to do so.

We may, therefore, confidently conclude that, according to the words of John of Salisbury, Henry was, by means of the ring, to be invested with the feudal possession of Ireland. He was to become the pope's man and to do homage to him for Ireland. The ceremony of investiture would naturally be performed by the pope's legate, who, at that time, was Theobald, archbishop of Canterbury.

Scheffer-Boichorst cites as a similar instance the case of the king of the Isle of Man, who, in 1219, surrendered his little kingdom to the pope, Honorius III., and received it back from him as a fief. By means of a gold ring, sent him by the pope for this purpose, he was invested with his kingdom by the papal legate, the bishop of Norwich. See *Raynaldi Annales Eccles.*, for the year 1219, § 44, Vol. XIII, p. 297.

But although Adrian thus offered to invest Henry with the government of Ireland, there is no evidence that the investiture ever took place. During the next years Henry did not add to his titles that of "Lord of Ireland." This fact alone would be sufficient evidence that he was never invested with it.

Neither does John of Salisbury say that Henry was invested with Ireland. He brought the ring *quo fieret investitura*, but there is not the slightest indication in John's words that the purpose was carried into effect. Furthermore, we cannot find any evidence that Adrian's offer had any influence on the course of events during the next few years. Henry did not advance any claim to Ireland in consequence of it. When he went to Ireland to take possession of it (1172) he did not appeal to the fact that he had been invested with it by Adrian. He did not even publish the fact that the pope had offered to invest him with it. Why? Because, the act of investiture not having been performed, the offer had no binding force, and no permanent value.

We must conclude, therefore, that Henry did not do homage to the pope nor swear fealty to him for Ireland. Since the offer was not accepted and acted upon, it remained merely an offer, a dead letter, of no force whatever. It gave the king no rights in

<sup>22</sup> For further examples see *Deutsche Zeitschrift f. Geschichtswissenschaft*, 1890, p. 327, where Scheffer-Boichorst has noted several similar examples.



Ireland; for only by the act of investiture could such rights be conveyed to him. Therefore, when he took possession of Ireland, he did so neither by virtue of the papal investiture nor by the papal offer of investiture. Henry II. got possession of Ireland *vi et armis*, and not as a fief but as an absolute possession. Neither Adrian nor Adrian's offer, as recorded by John of Salisbury, can in any way be made responsible for Henry's seizure of Ireland. And after he had taken forcible possession of it he tried, but without success, to persuade three successive popes to acknowledge the absolute character of his title to it.

When we ask why the investiture did not take place, we are left largely to conjecture. No one has given us a satisfactory reason for it. In the first place, the words of Robert de Torrigneio must be considered. He says that the opposition of the empress, Matilda, caused the invasion of Ireland to be put off. But did she oppose the offered investiture? We do not know. It is questionable whether her influence over Henry was sufficiently strong at that time to have been decisive in such a matter. However, Matilda had had personal experience in the great struggle about ecclesiastical investitures between the emperor and the popes, and she would probably have been able to advance good reasons for rejecting the pope's offer.

It must also be noted that Henry had not asked for investiture, but for the permission to invade and subjugate Ireland. In other words, he wished to become, not the feudal lord, but the absolute possessor of that land, and that he could become only by conquest. For some of his French possessions he was already the feudal subject of the king of France, with whom he was involved in constant quarrels. He knew that the feudal relation was burdensome and a most annoying hindrance to free and independent action. He had already begun his ambitious policy of concentrating the power in his own hands and of extending his authority. He may well therefore have shrunk from entering into another feudal relation which might easily become a still greater restriction and hindrance than the one in which he already found himself.

Possibly Henry was offended and frightened by the claim of the pope to be the possessor of all islands. For England also was an island. And if Henry should accept Ireland from the pope and thus recognize the claim of the latter to all islands, who was to assure him that the pope would not claim England in the same way and demand that Henry hold its crown also as a papal fief? Henry II. was clever, and it seems hardly possible that he or some of his advisers should not have seen the conclusion to which the claim of the pope logically led. It is possible, therefore, that he refused the investiture because he would not recognize the principle on which the pope's claims rested.

But there is another reason which seems to me even more probable and potent for his rejection of the offer of the pope. It must be noted that John of Salisbury does not speak of the conditions on which Adrian offered to invest Henry with the government of Ireland. But were there no conditions attached to it? Let us see. The relations existing between Adrian and Henry were not so intimate as to warrant the supposition that Adrian made the offer out of absolutely disinterested friendship.

Shall we listen to the supposition that it was out of the natural pride of an Englishman to be able to confer a favor on an English king? I regard the supposition as thoughtless and slanderous. There is nothing in Adrian's conduct or letters that would indicate that he was filled with the patriotic desire to see England's authority extended over her neighbors. There is no evidence that he labored out of patriotic motives to increase the power and prestige of the English king. There is no proof that he was inclined to favor his native land at the cost of St. Peter. He never was influenced in his papal policy by his nationality. As pope he labored for the whole church, not for the aggrandizement of a single power, even though it were his native country. He had a high, sane, and true conception of his office. Few popes have been more thoroughly imbued with what we may call the universal spirit of their office than was he. He was a fine exponent of the universal character of the papacy. From motives of simple friendship or of patriotism to have diminished the possessions of the church would have been to make the papacy subservient to particular and private ends. And that would have been malfeasance in office and treason to St. Peter. The whole pontificate of Adrian IV. shows that it would have been impossible for him to have acted in so treasonable a manner. The church had a tremendous transforming power. Witness Thomas à Becket.

Besides, speaking in the large, it has always been the papal policy to make concessions only when substantial concessions are made in return. *Do ut des, facio ut facias* is the unwritten law, the principle on which all popes act. And properly so, too; for the possessions of St. Peter should be used to advance his interests, and not to gratify the private and personal desires of the popes. If Adrian made a grant to Henry, he expected something in return. In other words, he attached some condition to his offer. In order to discover what this condition probably was, let us examine the following letter:

Adrianus E. s. s. D. Theobaldo Cantuariensi archiepiscopo apostolicae sedis legato s. e. a. b. Quanto magis sacrosancta Romana ecclesia te inter alios ecclesiarum praelatos ab ipso promotionis suae [*sic!* Read *tuae*] tempore honoravit, quanto et personam tuam maiori caritatis affectione dilexit, tanto amplius ei deberes in omni humilitate substerni, nec aliquid, quod ad eius contemptum vel incommodum pertineret, deceret te ullatenus machinari. Quod enim in toto Anglico regno praerogativa solus nosceris obtinere quod vice nostra tibi aliorum errata permissum est emendare, quod eadem Romana ecclesia te non solum in partem vocavit sollicitudinis, verum etiam quadammodo (read quodammodo) in plenitudinem potestatis, oporteret te quandoque ad mentem reducere, et tantorum memoria praemiorum ab offensione nostra tuum deberet animum retardare. Miramur autem plurimum et gravamur, quod in oblivionem tot beneficiorum usque adeo devenisti, et collatam tibi a Romana ecclesia dignitatem ita videris abiecisse post tergum, quod cum ipsa te super alios exaltasset, tu eam, sicut rei effectus indicat, deprimere niteris, et robur virtutis eius, cui tamen nemo est qui posset resistere, praesumis modis omnibus enervare. Ad notitiam siquidem nostram, fama referente, pervenit, *quam ita apud te et apud regem Angliae appellatio sit sepulta, quod aliquis non est, qui in tua vel in illius presentia ad sedem apostolicam audeat appellare.* Sed nunquam [numquid?] ad alterius institutionem principii contra edictum Dominicae praeceptionis aspiras. [?] Nunquam [numquid?] potestatem Petri et apostolicae fastigia dignitatis cogitas minorare. [?] Nunquam [numquid?] ad scissionem vestimentorum Christi, quae tamen scindi non possint, indebito conatu moliris. [?] Talem utique retributionem Deum non credimus approbare, dum te ingratum nobis invenire pro

impensis beneficiis debeamus, et operibus nostris ita sinistre ita in contrarium respondere. Accedit etiam ad hoc, quod in exhibenda iustitia his qui iniustitiam patiuntur, tepidus sis modis omnibus ac remissus, *et in tantum parti regis diceris procurare favorem, eiusque timori succumbere*, quod si quando litteras tibi pro aliquo, ut suam consequatur iustitiam, destinemus, nullatenus poterit per te, sicut iam saepius ex multorum conquestione didicimus, quod suum est obtinere. Caeterum oporteret te magis Deo quam hominibus obedire, nec pro iustitia deberes aciem fugere gladiatorum, nec laicorum saevitiam aut impetum formidare. Noveris autem quia si forte super his ad nos querela pervenerit iterata, *quod videlicet ne appellatio fiat ad nos audeas prohibere, vel ut prohibeatur silentio sustinere, seu quod, alicuius timore in iustitia facienda tepidum te exhibeas et remissum in requisitum forsitan et in punctum* (So the editor Hardwick; it should apparently be *inrequisitum forsitan et inpunitum*) *non poterimus praeterire*. Ad haec nosse te volumus, quod abbati s. Augustini, iuxta petitionem nuntiorum tuorum, dedimus in mandatis, ut professionem tibi exhibeat, si canonice et legitime constiterit praedecessores eius ipsam professionem tuis antecessoribus praestitisse. Quod si hoc non esse constiterit, occasione litterarum illarum, professionem ab eo non audeas ulla violentia extorquere. Alioquin in fervore animi nostri, tam pro hoc quam pro caeteris praelibatis, et tuum candelabrum concutiemus, et tantam praesumptionem cum gravibus usuris, auctore Domino, exigemus.—*Data Beneventi X. Kal. Feb. (January 23, 1156).*

As is apparent, this is a letter of Adrian IV. to Theobald, archbishop of Canterbury. It has been published, with many errors, for some of which I have offered emendations, by Hardwick in his edition of Thomas Elmham's *Historia Monasterii s. Augustini Cantuariensis*, pp. 411 ff.

Adrian here recounts the high ecclesiastical honors which have been heaped on the archbishop and then upbraids him for his actions by which he is working injury to the Church. The king has forbidden the clergy of England to appeal to Rome, and the archbishop supports him in this iniquitous prohibition. It is apparent, therefore, that Henry had already begun the policy which was to culminate in the constitutions of Clarendon (1164) and the murder of Becket. He had begun to assume authority in ecclesiastical matters and had thereby given offense to the pope. Adrian threatens Theobald with deposition if he dares continue to prohibit appeals to Rome or silently permits them to be prohibited. But what would he say to Henry? Would such conduct in a king be passed over in silence?

From the date of this letter it is apparent that it was written at the very time when Henry's ambassadors were in Benevento to ask, among other things, for the pope's consent to the invasion of Ireland. The request was an impossible one, and certainly the pope would not be disposed to grant favors indiscriminately to a king who was usurping ecclesiastical authority, acting against the laws of the church, and oppressing the clergy by depriving them of their rights and liberties. The evil must be stopped. But Adrian IV. was not rash. Throughout his pontificate he resorted to extreme measures only with the greatest reluctance and after all other means had failed. The history of his negotiations with Frederick I. would abundantly prove this. He must have been searching for the means by which he could peaceably persuade Henry to change this policy so hostile to the church. And when he learned that Henry coveted Ireland, what more natural than that he should offer to invest him with



the government of the island, the possession of St. Peter, but on the condition that Henry change his policy and no longer interfere with the liberties of the church in England?

It is admitted that civil wars had been raging for some time in Ireland, and that the churches there were suffering from them. It was naturally to be hoped that a strong overlord, who, like Henry, was near at hand, would restore peace to the island. In the blessings of this peace the church would have no small share. Surely the cession of Ireland as a fief to the king of England would have been a small price to pay for the peace of Ireland and the consequent prosperity of the church there, and for the free exercise of the liberties of the church in England, which was so seriously threatened by the royal usurpations. Adrian IV. needs no justification for having made this offer.

And in such a feudal relation there was absolutely nothing derogatory or dishonoring to the Irish people. Europe, at that time, was feudal and thought in terms of feudalism. The feudal relation was the universal and natural one.

John of Salisbury, who stood in the favor of the king and was at the same time the secretary of Archbishop Theobald, foresaw the coming storm and hoped to avert it by persuading Adrian to this conciliatory offer, by which the king might be recalled to the path of obedience and justice. But the plan failed. Henry refused to accept the offered terms. His heart was set on acquiring the complete mastery over the church in England and on breaking down the authority of the pope there. And for the conquest of Ireland he could bide his time. Therefore he refused the investiture; he took no oath of homage and fidelity to the pope; he continued his policy of suppressing the liberties of the church; the ring, instead of being returned to the pope, went into the royal treasury, and the papal letter, now valueless, into the archives. John of Salisbury received scant reward for his pains. He could not do otherwise than resist the king's policy toward the church, and therefore he soon lost the royal favor. But the further progress of this great drama, as well as the later efforts of Henry II. to get possession of Ireland, and his negotiations with the successive popes on the same subject, lie beyond the scope of this study. But it is significant that in those negotiations the point of contention was the nature of Henry's claim to Ireland; he endeavored to secure papal recognition of his absolute possession of it, while the popes regarded it as the property of St. Peter, and Henry's tenure of it as feudal.

## II. LAUDABILITER

We come now to an entirely different question. We have seen that Adrian IV. offered to invest Henry II. with Ireland; but is *Laudabiliter* the document by which he made the offer? It may or it may not be. The question must be examined and answered on its own merits. *Laudabiliter* must be subjected to all the tests to which an official mediæval document can be put. If it stands these tests, it is genuine; otherwise, it is false. If, on examination, *Laudabiliter* is found not to conform to the rules according to which all similar papal documents were drawn up; if it does not



accord with the statements of other unquestionably genuine writings which treat of the same subject; if, finally, it contains contradictions and other characteristic imperfections, we shall be compelled to say that it is not genuine. The trustworthiness of Giraldus Cambrensis, to whom we owe its preservation, has nothing to do with the question of its genuineness and should be left out of the discussion. It will be necessary, first of all, to study the document itself, and to this end I reproduce the text of it. It will be observed that certain of its sentences are repeated, either in whole or in part; and since this fact seems to me to be of some aid in determining the character of the document, they are printed in italics, and those which are identical or nearly so, are supplied with a common letter:

I. Adrianus servus servorum Dei carissimo in Christo filio illustri Anglorum regi s. e. a. b. Laudabiliter satis et fructuose de (a) *glorioso nomine propagando in terris* et (b) *aeternae felicitatis praemio cumulando in caelis* tua magnificentia cogitat, dum (c) *ad dilatandos ecclesiae terminos*, ad declarandam indoctis et rudibus populis Christianae fidei veritatem, et (d) *vitiorum plantaria* de agro Domenico *exstirpanda*, sicut catholicus princeps intendis, et ad id convenientius exequendum, consilium apostolicae sedis exigis et favorem. In quo facto quanto altiori consilio et maiori discretione procedis, tanto in eo feliciorem progressum te, praestante Domino, confidimus habiturum; eo quod ad bonum exitum semper et finem soleant attingere, quae de ardore fidei et religionis amore principium acceperunt.

II. Sane Hiberniam et omnes insulas, quibus sol iustitiae, Christus, illuxit, et quae documenta fidei Christianae ceperunt, ad ius b. Petri et sacrosanctae Romanae ecclesiae, quod tua etiam nobilitas recognoscit, non est dubium pertinere. Unde tanto in eis libentius plantationem fidelem et germen gratum Deo inserimus, quanto id a nobis interno examine districtius prospiciendum.

III. Significasti siquidem nobis, fili in Christo carissime, te Hiberniae insulam ad subdendum illum populum legibus et (d) *vitiorum plantaria inde exstirpanda* velle intrare, et de (e) *singulis domibus annuam unius denarii b. Petro velle solvere pensionem*, (f) et *iura ecclesiarum illius terrae illibata et integra conservare*.

IV. Nos itaque, pium et laudabile desiderium tuum cum favore congruo prosequentes, et petitioni tuae benignum impendentes assensum, gratum et acceptum habemus, ut (c) *pro dilatandis ecclesiae terminis*, pro vitiorum restringendo decursu, pro corrigendis moribus et virtutibus inserendis, pro Christianae religionis augmento, insulam illam ingrediaris, et quae ad honorem Dei et salutem illius terrae spectaverint exequaris, et illius terrae populus honorifice te recipiat, et sicut dominum veneretur, (f) *iure nimirum ecclesiarum illibato et integro permanente* et (e) *salva b. Petro et sacrosanctae Romanae ecclesiae de singulis domibus annua unius denarii pensione*.

V. Si ergo quod concepisti animo effectu duxeris prosequente complendum, stude gentem illam bonis moribus informare; et agas tam per te quam per illos, quos ad hoc fide, verbo, et vita, idoneos esse prospexeris, ut coretur ibi ecclesia, plantetur et crescat fidei Christianae religio, et quae ad honorem Dei et salutem pertinent animarum per te taliter ordinentur ut a Deo (b) *sempiternae mercedis cumulum consequi merearis*, et (a) *in terris gloriosum nomen valeas in seculis obtinere*.

The gist of this letter is found, I believe, in the following summary:

I. The king is taking praiseworthy means of spreading the glorious name (whose name?) in the earth and of laying up reward in heaven by laboring for the extension of the borders of the church, for the proclamation of the true faith to untaught and

uncultured peoples, and for weeding out the vices from the Lord's field, and by seeking the papal advice and favor in such labors. For, the deeper the counsel and the greater the discretion with which he proceeds, the greater will be his success in the undertaking. For whatever has its origin in religious zeal and devotion to religion always comes to a good and successful end.

II. Ireland, as well as all other islands which have received Christianity, belong to St. Peter. The pope is the more willing to sow the seed in these islands, because his conscience will demand of him a strict account of them.

III. The king has made known to the pope that he wishes to enter Ireland for the purpose of subjecting its people to laws and extirpating their vices; he is willing to pay St. Peter a penny each year for every house, and preserve intact the rights of the church there.

IV. The pope gives his consent to the plan and repeats and expands the conditions which have already been named. He is also willing that the Irish shall receive Henry as their lord.

V. If the king determines to carry his wish into effect let him strive to teach the Irish good morals, and let him and all those of whom he makes use in the undertaking so act that the church in Ireland may be adorned, the Christian religion be planted and have increase, and let him so dispose all things that pertain to the honor of God and to the salvation of souls that he may deserve a reward in heaven and forever have a glorious name in the earth.

It seems necessary to preface the discussion of this document with a brief statement about the rules and customs which prevailed in the papal *cancellaria* during the Middle Age. To the papal secretaries were given certain instructions which they must carefully and exactly follow in drawing up official documents. In consequence of the great stress laid on some of these rules they were so rigidly followed that they are unerring tests of genuineness and forgery. For it is agreed by all that a document which offends seriously against these rules can not have been written in the papal *cancellaria*, and if it purports to be a papal writing, it is declared to be a forgery. For a discussion of this subject, I refer to such handbooks as those of Bresslau and Leist.

By comparing *Laudabiliter* with the account of John of Salisbury, we discover the following three significant differences: First, John's statement that all islands belong to the pope was, as we have seen, in full agreement with the ideas of the times. But in *Laudabiliter* this theory receives a peculiar limitation; only those islands which have received Christianity are the possession of St. Peter. Secondly, it was a rule of the papal *cancellaria* that the person at whose request a favor was granted should be named in the document by which the favor was conferred or confirmed. John says that the gift was made *ad preces meas*. But there is no mention of this fact in *Laudabiliter*. Thirdly, there is not the slightest reference in *Laudabiliter* to the promised investiture of which John makes mention. But investiture was the most important thing of all, because without it a man could have no right to the fief in question. The rights to a fief could be conferred only by the act of investiture. And we search in

vain in *Laudabiliter* for the technical expressions *concessit et dedit* and *iure hereditario* which were used by John. There is here a radical defect in *Laudabiliter*. In paragraph II the pope is made to say that Ireland belongs to St. Peter, and in paragraph IV he merely gives his consent that Henry may invade Ireland and that the Irish may receive him with marks of honor and venerate him as their lord. Now, it is absolutely impossible that a fief should have been conferred by any one in the twelfth century by a document so vague and untechnical in its language. The conferring of a fief was a legal transaction of the utmost importance and was always done in technical language, and generally made more solemn by the emphatic heaping up of technical terms to indicate the absolute and unquestionable character of the grant. In such grants *damus*, *concedimus*, *donamus*, *auctorizamus*, *confirmamus*, and *investimus* are the words most frequently used. One has but to look into the documents of that period by which such grants were made to assure oneself that such technical terms were an essential part of every letter of grant. I have examined a large number of these grants, and not in one of them have I found such technical terms wanting. In fact, it is the rule to find at least two, and often even three or four, of these words used in every such document. The presence and repetition of these technical terms were quite as necessary and universal in official documents of the twelfth century as they are today in our deeds of grant. So essential were they to a transaction of this sort that John of Salisbury used them even though he was only making an untechnical statement of the fact.

Not less essential to such a document was the mention of the hereditary character of the grant. The heirs were always mentioned or it was explicitly said that the fief should return to its original owner on the death of the one to whom the grant is made.

That the papal secretaries were not ignorant of the necessity of such technical terms is apparent from the document which they drew up only a few weeks later (June, 1156), in which Adrian confirmed William of Sicily in the possession of his lands. (Watterich, *Vitae*, Vol. II, pp. 352-6. To avoid needless repetition, I simply refer to the passages from various documents quoted above in connection with the discussion of the technical terms, *concessit et dedit*.)

In view of the rigor with which such technical terms were used in documents of this sort in the Middle Age, there is but one conclusion possible. *Laudabiliter* cannot have been written by one who knew what was essential to such a document. It cannot have been written in the papal *cancellaria*, and, therefore, it is not genuine.

I should be willing to rest the case against *Laudabiliter* here in the full confidence that it would be condemned by all who are trained in the *res diplomaticae* of the Middle Age. But we may apply to it other tests by comparing it with the letters which Alexander III. wrote concerning Ireland. Three of these letters, numbered 12,162, 12,163, and 12,164 in the *Regesta* of Jaffé-Loewenfeld, are printed in Migne, *Patrologia Latina*, Vol. CC, cols. 883 ff. They all bear the same date, September 20, and it is certain that they were written in 1172. In one of them, which is addressed to Henry II., the pope congratulates him on his success in Ireland, and closes with the following passage:



Et quia, sicut tuae magnitudinis excellentia (novit), Romana ecclesia aliud ius habet in insula quam in terra magna et continua, nos eam de tuae devotionis fervore spem fiduciamque tenentes, quod iura ipsius ecclesiae non solum conservare velis sed etiam ampliare, et ubi nullum ius habet, id debes sibi conferre, magnificentiam tuam rogamus et sollicitè commonemus ut in prescripta terra iura b. Petri nobis studeas sollicitè conservare, et si etiam ibi non habet, tua magnitudo eidem ecclesiae eadem iura constituat et assignet ita quod exinde regiae celsitudini gratias debeamus exsolvere copiosas, et tu primitias tuae gloriae et triumphi Deo videaris offerre. Data Tusculani XII. Kal. Oct.

Alexander III. does not here name the *Donation*, but it is apparent that it was in his mind. The islands do not stand in the same relation to the pope as the mainland. Alexander expresses the confidence that Henry will be willing to acknowledge his duty, and therefore he beseeches him to preserve whatever rights St. Peter already actually exercises in Ireland, and to establish whatever other rights St. Peter ought to have there. In the whole letter there is no mention of Adrian IV., or of any document issued by him, touching Ireland. There is nothing that can possibly be interpreted as a reference to *Laudabiliter*.

Of the two other letters just referred to the one is addressed to the kings and princes of Ireland, urging them to keep their oaths to Henry II. The other is addressed to Christian, bishop of Lismore, who was then papal legate in Ireland, and to the four Irish archbishops and their suffragans. But in neither of these letters do we find any reference to Adrian IV. or to any of his letters.

From the letter to the Irish clergy I quote the following paragraph:

Ita mandatum nostrum fideliter et efficaciter exsecuturi ut sicut praefatus rex, tanquam catholicus et Christianissimus princeps, nos tam in decimis quam in aliis ecclesiasticis iustitiis vobis restituendis, et in omnibus quae ad ecclesiasticam pertinent liberatem, pie et benigne dicitur exaudisse, ita etiam vos sibi ea quae ad regiam respiciunt dignitatem conservetis firmiter et quantum vobis est, faciatis ab aliis conservari.

Here there is mention made of tithes, but not a word about the payment of the Peter's pence which is spoken of in *Laudabiliter*. When we reflect that it was customary to refer to, and even to quote verbatim, the important sections of any papal document which had previously been issued touching the same subject, we must admit that these letters of Alexander III. give strong testimony against the genuineness of *Laudabiliter*.

But there is another letter attributed to Alexander III. in which Adrian IV. and his cession of Ireland to Henry II. are mentioned. This letter, which is brief and without date, I give entire:

Alexander e. s. s. D. carissimo in Christo filio, illustri Anglorum regi, s. e. a. b. Quoniam ea, quae a decessoribus nostris rationabiliter indulta noscuntur, perpetua merentur stabilitate firmari, venerabilis Adriani papae vestigiis inhaerentes, vestrique desiderii fructum attendentes, concessionem eiusdem super Hibernici regni dominio vobis indulto, salva beato Petro et sacrosanctae Romanae ecclesiae sicut in Anglia sic et in Hibernia de singulis domibus annua unius denarii pensione, ratum habemus et confirmamus, quatinus, eliminatis terrae illius spurcitiis, barbara natio, quae Christiano censetur nomine, vestra diligentia morum induet venustatem, et redacta in formam hactenus informi finium illorum ecclesia, gens ea per vos Christianae professionis nomen cum effectu de cetero consequatur.



All our knowledge of this document is derived from Giraldus Cambrensis, who published it first in his *De Expugnatione Hiberniae* (Book II, chap. 5, Vol. V, pp. 315 ff.), and again in his *De instructione Prin.* (Book II, chap. 19, Vol. VIII, p. 197). In the latter place, however, he prefaced it with the following statement: "Sicut a quibusdam impetratum asseritur aut confingitur, ab aliis autem unquam impetratum fuisse negatur." That these early doubts about the genuineness of this letter were well founded will appear from the following considerations. The points of difference between this and the genuine letters of Alexander III., discussed above, are easily apparent. If all these letters are genuine, it would be difficult to explain these differences. In the time of Alexander III. it was a fixed rule of the papal *cancellaria* that all kings and princes should be addressed with *thou* and *thine* (*tu* and *tuus*). But the pope demanded that all should address him with *you* and *yours* (*vos* and *vester*). Frederick I. and Adrian IV. had, indeed, a quarrel over this usage. Because the dignity of the pope and his claim to superiority over all princes and potentates were involved, this rule was of the utmost importance and was never broken in the papal *cancellaria*. Hence this cannot be a letter of Alexander III. Its author was evidently ignorant of the genuine letters of that pope, and so his writing does not agree with them. This false letter of Alexander III. has been quoted as a proof of the genuineness of *Laudabiliter*. But, being a forgery and agreeing with the terms of *Laudabiliter*, it furnishes, not a confirmation of, but good grounds for suspecting, the latter.

The arguments thus far advanced force upon us the conclusion that *Laudabiliter* is not genuine. Those that are yet to be brought forward have a double purpose: first, they are intended to add in a cumulative way to the force of the previous arguments; and, secondly, they are meant to reveal the true character of *Laudabiliter*. For this famous document is neither a genuine letter of Adrian IV. nor a forgery in the true sense of the word. It was not written with the purpose of deceiving or of securing any material advantage. The following arguments will, I hope, make it probable, if not absolutely certain, that it is merely a Latin exercise of some twelfth-century student, who was practicing himself in the art of letter-writing, and for this purpose chose to impersonate Adrian IV. It is well known that the composition of such imaginary correspondence formed a part of the training of students in the Middle Age.<sup>23</sup>

To this conclusion we are led by a study of the style and phraseology of the letter. Its poverty of vocabulary, its numerous and awkward repetitions, its general haziness and indefiniteness, all reveal the untrained and uncertain hand of a student who is master neither of his materials nor of the proper literary forms. A reference to the sentences printed in italics will make any further discussion of this point unnecessary. A careful study of the letter will reveal the fact that it contains certain discrepancies of statement and logic. *Ad dilatandos ecclesiae terminos* certainly implies that Ireland was outside of the limits of the church. *Ad declarandam indoctis et rudibus populis*

<sup>23</sup> See "Monachi Sangallensis de Gestis Karoli Imperatoris," I, 3 (*M. G. SS.*, Vol. II, pp. 731 f.) for evidence that it was the practice in the days of Karl the Great.

*Christianae fidei veritatem* apparently has the same meaning. But Ireland, as we have seen, was Christian and possessed a complete ecclesiastical organization, recognized and, in part, created by the pope. And our student was aware of this fact because in paragraph IV he speaks of the church as if it already existed there, *ut decoretur ibi ecclesia*. And, according to paragraph II, Ireland must have been Christian, because only Christian islands are said to belong to St. Peter. And yet in the next sentence the pope is made to speak of sowing the seed in such islands as if they were still heathen.

Not less striking is the contradiction or lack of logical coherence in two sentences in paragraph I: "*The deeper the counsel and the greater the discretion with which you proceed, the greater will be your success.*" This is a rational statement and needs no further proof. But it is followed by a statement that, absurdly enough, has exactly the opposite meaning: "*Because whatever has its origin in zeal for religion and the love of the faith always succeeds.*" The presence of such contradictions and such lack of clearness and precision in statement are easily explained if this letter is only a student's exercise.

We know also that this student had before him a genuine letter of Adrian IV. from which he borrowed several sentences, adapting them, badly and in an awkward way, to suit his purpose. Toward the end of the year 1158 or early in the year 1159, Henry II. and Louis VII. of France planned to make a campaign together against the Mohammedans in Spain. They sent a common embassy to Adrian IV. setting forth their desire and asking the pope's consent. But Adrian, for reasons into which we need not enter here, refused to sanction the undertaking. The embassy naturally received two letters in reply, the one addressed to Louis VII., the other to Henry II. The former has been preserved, the latter lost. Knowing the customs of the papal *cancellaria*, we may say with certainty that in their essential parts touching the matter in hand these two letters were practically identical in everything except the names of the persons addressed. The letter addressed to Henry had no value to him, and was therefore not carefully preserved. In some way it fell into the hands of our student. In order to show how he utilized it in the composition of *Laudabiliter*, I quote the following extracts from the pope's letter to Louis VII:

Adrianus e. s. s. D. carissimo in Christo filio Ludovico, illustri Francorum regi s. e. a. b. Satis laudabiliter et fructuose de Christiano nomine propagando in terris, et aeternae beatitudinis praemio tibi cumulando in caelis, tua videtur magnificentia cogitare, dum ad dilatandos terminos populi Christiani, ad paganorum barbariem debellandam, et ad gentes apostatrices, et quae catholicae fidei refugiant nec recipiunt veritatem, Christianorum iugo et ditioe subdendos etc. . . . atque ad id convenientius exsequendum, matris tuae sacrosanctae Romanae ecclesiae consilium exigit et favorem. Quod quidem propositum tanto magis gratum acceptumque tenemus, et amplius sicut commendandum est commendamus, quanto de sinceriori caritatis radice talem intentionem et votum tam laudabile credimus processisse, ac de maiore ardore fidei et religionis amore propositum et desiderium tuum principium acceperunt.

The changes made in transferring and adapting these sentences to *Laudabiliter* are apparent. The order of the words is somewhat varied; *Christiano* becomes *glorioso*; *beatitudinis felicitatis*, etc. But, while the sentences are logical, sensible, and appropriate

in their original setting in Adrian's letter to Louis, they become absurd and contradictory when transferred to *Laudabiliter*. *Ad dilatandos terminos populi Christiani* is quite properly used in the letter to Louis, because it refers to those parts of Spain which were held by the Mohammedans. But it could not by any means be applied to Ireland. Nor is it strange if the Irish have always refused to accept as genuine a document which described them in terms borrowed from an account which had originally applied to Mohammedans.

Adrian expresses his satisfaction with Louis because his "plan and desire have their origin in his zeal for religion and his love for the faith." Here these words are sane and fit into the reasoning. And yet the pope considers the proposed expedition against the Mohammedans ill-advised and not likely to succeed for reasons named later in the letter. We have already seen how badly this sentiment is fitted into the chain of reasoning and its new setting in *Laudabiliter*. As it there stands, it is not only contradictory to the reasoning of Adrian in his letter to Louis; it is also an affront to his intelligence and good sense. For Adrian IV. was neither a dreamer nor an enthusiast.

That the style of *Laudabiliter* gave offense is apparent from the fact that later copyists endeavored to improve upon it. Changes were introduced into its text which can be explained in no other way. The uncertainty as to whose name is meant in paragraph I was removed by inserting *tuo*. In the clause *ad subdendum illum populum legibus* it is uncertain what laws are meant. They might be the laws of England or those of the church. The later insertion of *Christianis* before *legibus* made the meaning definite. The absurdity of the statement "*eo quod ad bonum exitum semper et finem soleant attingere, quae de ardore fidei et religionis amore principium acceperunt*," was evidently felt, because the whole sentence in which it is found was later omitted. The same fate was meted out to the sentence, "*Unde tanto in eis libentius plantationem fidelem et germen gratum Deo inserimus*," etc., because it was in plain contradiction to the well-known fact that Ireland was already Christian. Paragraph II was transferred to a place further on in the document, and also radically modified, principally because it seemed not to be in its most logical position. It is surely significant that it is these borrowed sentences, all of which have been discussed in former paragraphs, that gave offense to later copyists.

I believe, therefore, that *Laudabiliter* is the Latin exercise of a mediæval student. It can have no official value. It may contain some truth: with that I am not particularly concerned here. However, since its author did not have before him the real letter of Adrian IV. to which John of Salisbury alludes, it seems to me unwarrantable to attach any importance to what it says about the payment of the Peter's pence. It is true that it was then a part of the papal policy to extend the custom of the payment of Peter's pence. But Alexander III. did not mention it in connection with Ireland in 1172. Moreover, Adrian would probably have been content with the change which he demanded in the policy of Henry toward the church. *Laudabiliter* cannot be regarded as a trustworthy source of information on any point. It must be rejected as entirely worthless.



## III. THE SUPPOSED LETTER OF HENRY II. TO ADRIAN IV.

It seems very strange to me that in connection with this question no one has ever critically examined a certain extant letter which is said to have been written by Henry II. to Adrian IV. at the time of the accession of the latter to the chair of St. Peter. It has been taken for granted that it is the letter which Henry's messengers bore to the pope on their mission which has been discussed in part II of this study. Historians have made use of it without question, although some of them have expressed a mild surprise at its contents, which are not in the least in keeping with the character of its reputed royal author. Critical study of it has convinced me that it also is a student's exercise. In the text, which follows, the rhythmical endings, of which I wish to speak later, are printed in italics, the most important examples of puns and alliteration, and certain other matters worthy of special attention, are in small capitals. I have taken it from Migne, *Patrologia Latina*, Vol. CCVII, *Petri Blesensis Epistolae*, in which collection it is numbered CLXVIII.

## TALI PAPAE TALIS REX

I. AURES nostras AURA dulcis afflavit, quia, sicut accepimus, creationis vestrae novitas tanquam aurora rutilans desolationis Romanae Ecclesiae *tenebras propulsavit*. GAUDET sedes Apostolica viduitatis suae *solatium consecuta*. GAUDENT omnes ecclesiae lucem novam oriri videntes, et ipsam usque ad perfectam diem *crescere praestolantes*. Sed GAUDET praecipue noster Occidens, quod velut Oriens novum lumen influere *promeruit orbis terrae*, et solem Christianitatis, qui versus Orientem nuper occubuit, divino munere, *Occidens restauravit*. Nos itaque, Pater Sancte, honori vestro MAGNIFICE *collaetantes* et divinae MAJESTATIS MAGNIFICENTIAM devotis inde *laudibus persequentes* paternitati vestrae, de cuius fervore filiali devotione confidimus, vota nostra familiarius aperimus. Si enim carnalis filius carnales affectus patri fidenter aperit, quanto fidentius spiritualis spiritualia potest *desideria reserare?*

Sane inter caeteras affectiones nostras non *mediocriter affectatus*, quod cum divina dextera reverendissimam personam vestram, tanquam lignum vivificum in medio Paradisi spiritualiter plantandum duxerit, et de terra nostra in suum *pomoerium transplantandum* summo opere studeatis fructuosis operibus et doctrinis ecclesias omnes ita reficere, quod beatam dicant omnes generationes vestrae *beatitudinis nationem*. Illud quoque sincero corde sitimus, quod spiritus procellarum, qui dignitatum culmina vehementius consuevit perflare, nunquam a sanctitatis studio vos *avellat* ne, quid absit, altius dignitatis fastigium, gravius *praecipitium subsequatur*.

II. Sed et illud *intime affectamus*, ut cum UNIVERSARUM ECCLESiarum ORDINATIO AD VOS PERTINEAT, tales ordinare curetis sine dilationis *dispendio cardinales* qui onus vestrum sciant, et velint et *valeant supportare*, non respicientes ad patriae propinquitatem, *generis qualitatem* aut *potentiae quantitatem*, sed quod Deum timeant, avaritiam odiant, iustitiam sitiunt, et zelo *ferveant animarum*.

III. Nec modicum nostrum movet affectum ut, cum ecclesiis supra modum officiat *indignitas ministrorum*, summa sollicitudine vigilare curetis, cum super dignitatum vel praebendarum collatione vestram continget requiri providentiam, ne quis indignus irruat in *patrimonium Crucifixi*.

IV. Cum autem FELIX terra, FELICIS redemptionis origine, conversatione, ac sanguine Christi consecrata, quam Christiana devotio praecipue venerari tenetur, tantis, SICUT OCCULATA FIDE NOVISTIS, perturbatur nationum incursibus, abominationibus polluitur, desiderio desideramus quod ad ipsius liberationem vestrae sollicitudinis vires accingatis.



V. Illud autem olim illustre imperium Constantinopolitanum NUNC GRAVITER DESOLATUM, quis affectare non debeat, ut, vestra providente prudentia, consolationem *recipiat opportunam?*

VI. Siquidem et honoris vestrae considerationis [so Migne, but the text evidently should be, honoris vestri consideratione] et commoditatis communis aemulatione affectare debemus, ut qui promotione divina universali praesidetis Ecclesiae, circa omnium ecclesiarum INFORMATIONEM AC REFORMATIONEM "assidue vigiletis."

VII. Confidimus autem in Domino, et speramus quod sicut de virtute in virtutem, et de honore in honorem divinitus sublimati secundum ipsorum exigentiam lucere curastis, sic ad Apostolicae sublimitatis *apicem evocati* subjectas ecclesias illustrare ac inflammare curabitis, ut non sit qui se abscondat a vestro *lumine et calore*, relicturi talia post decessum vestrum *vestigia sanctitatis* quod terra nativitatis vestrae, quae de FELICI iucundatur origine, de FELICE FINE poterit FELICIUS in *Domino gloriari*.

VIII. Demum Paternitatem vestram ex speciali confidentia *requirimus et rogamus* quatenus nos et familiares nostros, et statum regni nostri in sermonibus et orationibus vestris specialiter habere *dignemini commendatis*.

In the first place, the use of the *cursus velox*, or the rhythmical ending not only of the sentences, but even of the clauses, in a royal document of England, in that period is, I believe, otherwise unknown. The *cursus velox* consists of a dactyl followed by two trochees. Or, since it is a matter of accent and not of quantity, it would be more correct to say that the first foot consists of an accented, followed by two unaccented, syllables, and the two other feet consist, each, of an accented, followed by an unaccented, syllable. This *cursus velox* characterizes all the papal documents of that period, but I have not been able to find a single example of its use in any of the documents belonging to the early years of the reign of Henry II. Peter of Blois, in whose writings it is used not infrequently, did not become connected with the English court until about the year 1170.<sup>24</sup>

Not too much importance should be attached to the fact that the names of both the king and of the pope are wanting, because, of course, a lazy scribe may have wished to cut short his labors by omitting them. And yet it is not likely that the names of two so important men as Henry II. and Adrian IV. would have been omitted from such a letter; all the more so because a superscription of the most general character has been added: *Tali Papae talis rex*; that is, "King So-and-so to Pope So-and-so;" or translating it in accordance with its formula-like character, "Any king to any pope." Moreover, there is nothing in the letter to indicate that it was written by an *English* king. It is couched in the vaguest terms. There is no mention of a particular country, nothing in fact that would not apply equally well to any western country. The king and the pope to whom he is writing are fellow countrymen, and it is vaguely indicated that their country is somewhere in the West; that is all that can be said.

Furthermore, Henry II. is said to have recommended his messengers and

<sup>24</sup>For a good discussion of the *cursus* see NOEL VALOIS, "Étude sur le rythme des bulles pontificales," *Bibliothèque de l'école des chartes*, Vol. XLII (1881), pp. 161 ff. and 257 ff.; also *Analecta Bollandiana*, 1897, pp. 501 ff., and 1898, pp. 386 ff., where a good list of the literature on the subject is given; BRESSLAU, *Urkundenlehre*, Vol. I, pp. 590 ff.

Although there are several varieties of *cursus*, the schemes of the three most important are as follows: *cursus planus*,  $\text{L} \cup \cup | \text{L} \cup$ , e. g., *dona concedi*; *cursus tardus*,  $\text{L} \cup \cup | \text{L} \cup \cup$ , e. g., *praestat auxilium*; *cursus velox*,  $\text{L} \cup \cup | \text{L} \cup | \text{L} \cup$ , e. g., *crecere praestolantes*.

especially the monastery of St. Albans to the favor of the pope and to have made certain definite requests, among others, for permission to invade Ireland. But of all these things there is not a word in this letter. It could hardly have been made more general, impersonal, and colorless.

And now for the contents of the letter.

I. After long and cumbersome expressions of the general joy at the election of a new pontiff, the writer expresses his desire that the new pope may strive so to restore all the churches with his good works and doctrines that all generations may call his native land blessed; and may the troubles of his pontificate never separate him from the zeal of sanctity.

II. And since the control and management of all the churches belong to the pope, let him, without delay, create cardinals of such a character that they will be able and willing to carry his burden.

III. Since an unworthy clergy is a hindrance to the churches, let him watch with great care that no unworthy person may receive from him an ecclesiastical dignity or living.

IV. The pope is urged to gird himself up for the reconquest of the Holy Land, that is, to make a crusade.

V. There is a general desire that the pope should give aid to the Greek empire, once so illustrious, but now woefully devastated.

VI. For the sake of the pope's own good name and renown, and for the advancement of the common welfare, the pope ought to labor for the reformation of all the churches.

VII. The hope is expressed that the pope will extend his beneficial influence to the farthest limits of the church, and that he will, when he dies, leave behind him such proofs of his piety that his fellow-countrymen may rejoice over his happy end.

VIII. And finally the pope is asked to remember in his conversations and prayers the king, his family, and his kingdom.

This is really a complete general program for the new pope, consisting of three great lines of activity: a complete reformation of the clergy and of the church, the making of a crusade, and the restoring of the Greek empire. Surely that would be enough work for any one pontificate.

In discussing these contents I pass by, for the present, the first paragraph. In the beginning of the second paragraph it is said that the control and management of all the churches belong to the pope. *Universarum ecclesiarum ordinatio ad vos pertineat*. The thought of the sixth paragraph is very similar. But Henry II. had, as we have just seen, already begun to deny this principle; he had forbidden appeals to Rome and was interfering with the liberties of the church in England. And he persisted in this course for the next fifteen years. Not even in a congratulatory letter would he have recognized so fully the validity of a principle which he was resisting with all his might and which he was determined at all hazards to destroy in his own land.

The writer's solicitude about the character of the cardinals and of those who

should receive the offices and dignities of the church (Paragraphs II and III) would be absurdly hypocritical in Henry II., who preferred a worldly clergy that could be made to serve his own ends. The interest expressed in having a crusade (Paragraph IV) would be not less preposterous in Henry II., who was at that time engaged with all his energies in his own aggrandizement and in increasing the power of the crown. There was no one in Europe at that time more unwilling to go on a crusade than was Henry II.

What he is made to say about the condition of the Greek empire is contrary to the state of facts at that time. Not only was the Greek empire not *graviter desolatum*; it had successfully resisted the invasions of the Normans only a few years before this, and it was at that very moment invading southern Italy with victorious arms. The emperor, Manuel, was then following with determination, and with a fair prospect of success, the policy of obtaining possession of certain parts of Italy. Instead of needing the papal aid, the Greek emperor was actually threatening the possessions of the pope. In fact, in that very year, 1155, Adrian IV. and Frederick I. of Germany had renewed the agreement of Constance by the terms of which they had mutually bound themselves not to cede any land in Italy to the Greek emperor, and to resist him with all their might if he should attempt to secure it by invasion.<sup>25</sup> It must be observed that this Greek danger had been threatening the papacy for some years. To have written such a letter to the pope at this time would indicate a degree of ignorance of the world's doings that certainly did not exist at the English court.

If we turn to a consideration of the style and language of the letter, we find many things that betray the hand of a tyro. The puns are weak and the alliteration strained and excessive. *Aures-aura, magnifice-maiestatis-magnificentiam, velint-valeant, informationem-reformationem, illustrare-inflammaré, felici-felici-fine-felicius*. These examples may suffice, but the list could be greatly increased. The poverty of the writer's vocabulary as well as his strange phraseology are not less indicative of his lack of skill and training. *Affectare* and its derivatives are made to do yeoman service. *Gaudere* and *sitire* fare but little better. If the letter was addressed to Adrian IV. when, it may be asked, had he seen with his own eyes the abominations with which the Holy Land was polluted? *Sicut occulata fide novistis*. Was the pope ever before called the "Sun of Christianity"? And what is the meaning of that confused sentence, "*Sed gaudet praecipue noster Occidens, quod velut Oriens novum lumen influere promeruit orbi terrae, et solem Christianitatis, qui versus Orientem nuper occubuit, divino munere, Occidens restauravit?*" Does it mean that the West is rejoicing

<sup>25</sup> Their mutual promises were as follows: "Grecorum quoque regi nullam terram ex ista parte maris [Fridericus] concedet; quodsi forte ille invaserit pro viribus regni, quantocius poterit, ipsum eicere curabit . . . Regi autem Grecorum ex ista parte maris terram [papa] non concedet; quodsi ille invadere presumerit, domnus papa viribus beati Petri eum eicere curabit." This agreement of Constance had first been made between Eugene III. and Frederick I., in March, 1153. The text of it is found in *Wibaldi Epistolae*, No. 417, *JAFFÉ, Bibliotheca Rerum Germanicarum*, Vol. I, pp. 546 f., and in *M. G. Leges*, Vol. II, pp. 92 f. The text of the renewal between Adrian IV. and Frederick

I. is to be found in the "Rouleaux de Cluny," edited by HULLARD-BRÉHOLLES, in *Notices et extraits des Manuscrits de la Bibliothèque Impériale* (Paris, 1868), Vol. XXI, pp. 319 ff. For a discussion of the agreement and of its renewal, see PRUTZ, *Kaiser Friedrich I.*, Vol. I, pp. 47 f.; GIESEBRECHT, *Geschichte der Deutschen Kaiserzeit*, Vol. V, pp. 24 f.; KAP-HERR, *Abendländische Politik Kaiser Manuels*, pp. 42 f.; ZEPPELEIN, *Der Konstanzer Vertrag* ("Schriften des Vereins für die Geschichte des Bodensees," Vol. XVI, pp. 30 f.); JUNGFER, *Untersuchungen über Friedrichs I. griech. und norman. Politik*, pp. 9 f.; RIBBECK, *Friedrich I. und die römische Curie*, pp. 3 ff.



because it has furnished a pope or because of its success in a crusade? The context demands the former, the words themselves appear to have the latter, meaning. I suspect that the writer, who, I take it, was a student preparing a Latin exercise for his *magister* to correct, had found in some chronicle an account of a crusade in which the Occident and Orient were set over against each other, and he was so pleased with the idea that he tried to incorporate some of its sentences into his exercise, but failed to adapt them to their changed setting and purpose.

I have pointed out the most glaring mistakes and absurdities in the letter; a more extended study of it would bring others to light. But surely enough has been done to prove even to the most skeptical that the letter cannot have been written by Henry II. to Adrian IV. Indeed, there is nothing in the letter itself to indicate this authorship, and it seems to me that someone has hastily and without really studying it attributed it to Henry II. Who this was I cannot say. In the first edition of the letters of Peter of Blois (Paris, 1516), this letter is quite anonymous. Neither in the edition of Migne is its author or the pope to whom it is addressed named. The descriptive summary by which Migne has prefaced it is as follows: "Rex quidam sibi totique Occidenti gratulatur, quod N ex ipsius terra ad summum pontificatum pervenerit, eumque hortatur, ut dignos tantum ad dignitates ecclesiasticas promoveat." The editions by de Gussanville and by Giles I have not been able to consult, and therefore cannot say how they have regarded it. So far as I can see, about the only thing that could be urged in favor of Henry's authorship is the fact that it is found among the letters of Peter of Blois. It is, of course, superfluous to say that this circumstance carries with it no proof of its authorship.

As to the time when this exercise was actually written, nothing can be said with certainty. Assuming that the student put into it the background of his own day, there are certain indications of its age. The insistence on a reform of all the churches, the implied censure of the cardinals and of the ecclesiastical dignitaries and of the benefited clergy seem to me to accord a little better with the fourteenth and fifteenth centuries than with the twelfth and thirteenth. But the criticism is general, and a conclusion based on that alone would be very insecure. The reference to the desolate condition of the Greek empire might apply either to the destruction of the so-called Latin kingdom (1261) or, more probably, to the effects of the Turkish invasions in the fourteenth and fifteenth centuries.

An examination of the manuscripts in which this letter is found would fix the latest date at which it can have been written. If it should be found to exist only in the more recent of them, that would tend toward a confirmation of the late date to which I have tentatively assigned it. Manuscripts containing the letters of Peter of Blois are very numerous and widely scattered. Hardy (*Catalogue*, etc., Vol. II, pp. 553 ff.) has registered nearly one hundred of them, but his list is far from being complete. I regret that I have not been able to make a complete list of them and to examine all of them. I have, however, examined about sixty of them, but without success. I have not been able to find the letter in question in any of them.



I give here a list of those manuscripts, containing letters of Peter of Blois, which I have examined:

In the Vatican Library: Vat. 2931, 2973; Pal. 1460; Ottob. 614, 3008; Reg. Suec. 53, 136, 263. Biblioteca Barberiniana, XIV. 56.

In the k. und k. Hof-Bibliothek in Vienna: Nos. 559, 941, 3330, 3340, 3368, 3419, 3444, 3706, 4159, 4245, 4790, 4994, 12503, and 13538.

In the Kloster-Bibliothek in Admont, one manuscript.

My thanks are due Count Carlo Cipolla, Professor in Turin, who kindly examined a manuscript (No. 675) for me in the library at Turin.

In the Bibliothèque Nationale at Paris, M. Lebègue kindly examined for me the following list: Fonds Latin, Nos. 2604, 2605, 2607–2610A inclusive, 2836, 2953–2962 inclusive, 3309, 5372, 7717, 16251, 16252, 16714, 16715, 11867, 13420, 14169–14171 inclusive, 14486, 14764, 14879, 18587, 18588; and Nouvelles Acquis. Latines, No. 2243.

It may not be out of place to add that the literature about such students' exercises and imaginary correspondence is quite extensive. There are numerous monographs on single collections of formularies in which such letters are found. I content myself by referring only to the following as typically characteristic and in themselves interesting: Wattenbach, "Ueber Briefsteller des Mittelalters," *Archiv für oesterr. Geschichte*, Vol. XIV, pp. 60 ff.; also, "Ueber erfundene Briefe in Hss. d. Mittelalters, bes. Teufelsbriefe," *Sitzungsbericht d. k. pr. Akad. d. Wissenschaften zu Berlin*, 1892, pp. 91 ff. For famous examples of such letters, see Scheffer-Boichorst, *Zur Geschichte d. XII. u. XIII. Jahrh.*, pp. 290 ff., and Wagner, *Eberhard II., Bischof von Bamberg*, pp. 120 ff.

#### IV. A LETTER OF GERHOH OF REICHERSBERG TO ADRIAN IV. (1156) ENTITLED LIBER DE NOVITATIBUS HUIUS TEMPORIS

Among the leading clergy of Germany in the twelfth century Gerhoh of Reichersberg holds a conspicuous place. He was born in 1093 or 1094, in the village of Polling in Bavaria. After various fortunes he was, in 1132, made præpositus of the monastery of Regular Canons at Reichersberg on the Inn, a position which he held until his death in 1169.

Gerhoh had a very fertile pen and took a prominent part in the discussion of all the questions, great and small, that agitated his day. He lived to see the contest between papacy and empire pass through some of its most critical phases and suffered deeply from this great struggle. He was sincerely attached to both institutions and longed to see them working harmoniously together for the realization of certain great ideals of which he was possessed. He was, however, unsparing in his criticism of both. He never wearied of making proposals of reform and, unasked, gave his advice to the pope on all matters, whether of policy or doctrine. In theology he was rigidly orthodox and seemed to believe that the last word had been said on all the theological questions. He had formed his own ideas by the study of the great church fathers, especially Augustine and Hilary, and vigorously combated every shade of opinion that did not accord with the teachings of these his favorite authorities. The twelfth century was fruitful in new ideas, and Gerhoh was kept busy refuting them and their authors, the innovations and innovators, as he styled them.

The twelfth century witnessed a revival of classical studies—the real beginning of the Renaissance, it may be said—and some of the clergy, chief of whom was John of Salisbury, were thoroughly conversant with the Latin classics and took so great delight in them that they constantly quoted them in their writings. But Gerhoh, in his culture, was thoroughly mediæval. He seems to have been ignorant of the classics; at least, one searches in vain in his writings for quotations from them. Instead of the classics, he reveled in quotations from the Bible and from the church fathers. In fact, at times his works seem to be little more than mosaics made from these sources. And often, even when he does not cite an author by name, his thought and phraseology are borrowed from some father.

In Germany Gerhoh occupied much the same place and played the same rôle as Bernard of Clairvaux in France. He greatly admired Bernard and made free use of his writings, quoting them and recommending them to the perusal of others. And, like Bernard, he was thoroughly imbued with the monastic spirit of his day and labored to subject all the secular clergy to monastic discipline. According to his ideas, there could be no good priest who did not live by a monastic rule. For him no argument was necessary to prove that a secular priest was immoral. The mere fact that he did not live with his fellow priests in a common house and in subjection to a common rule was enough to condemn him.

Gerhoh had formed the habit of offering advice to the popes, and so, when Adrian IV. was elected, Gerhoh sent off a letter to him at once, dispatching it by Eberhard II., the bishop of Bamberg. This letter, however, which is now lost, remained unanswered, and Gerhoh felt somewhat hurt at the pope's silence. He accordingly wrote him another letter, exhibiting here and there in it his sense of injury. It is this second letter to Adrian that is here published. With a certain show of boastfulness he tells Adrian that his predecessors in the chair of St. Peter had been his friends and makes quite a display of the papal letters which he had at various times received. This letter, as its title indicates, was a general account of all the heresies and abuses in the church, and was intended to incite Adrian to the work of reform. The letter was begun probably toward the end of 1155 and completed early in the following year. It was dispatched by his brother Rudiger, who, no doubt, put it into the hands of the pope, whom he found at Benevento discussing the terms of peace with William of Sicily (May–June, 1156). But Gerhoh was no more successful with this than he had been with his first letter, for Adrian IV. did not reply to it. Gerhoh later complained of this neglect, and was at a loss to account for it. However, he offered as an excuse for it the fact that Adrian was no doubt busy with the affairs of his office. He was unwilling to believe that the pope was not well disposed toward him. In this Gerhoh was probably correct, for Adrian was engrossed with far more important matters. Questions of policy involving the future of the papacy were pressing for solution, and Adrian's pontificate was troubled by frequent quarrels with the emperor, which served as preludes to the great struggle which followed hard upon his death and filled the long pontificate of his successor, Alexander III.

The text of this letter is here presented in its entirety for the first time. Grisar published brief extracts from it in the *Zeitschrift für katholische Theologie*, Vol. IX (1885), pp. 536 ff., and Sackur edited and published selections from it (about one-fifth of the letter), along with other of Gerhoh's works, in the third volume of the *Libelli de Lite Imperatorum et Pontificum*. My interest was awakened in the letter while gathering materials for the life of Adrian IV., and I determined to publish it entire. It is preserved in a manuscript of the twelfth century, in the monastic library at Admont. The manuscript is of parchment in quarto. It is generally well written, although by several different hands. The letter occupies 165 pages of the manuscript, or rather only 163, since, through the error of the one who first numbered the pages, the numbers 131 and 151 were omitted.

The work of copying the manuscript was made easy for me by the kindness of Professor E. Mühlbacher, who had the manuscript sent to Vienna and with the greatest generosity placed the rooms of the Institut für österreichische Geschichtsforschung at my disposal, so that I was able to copy it with the greatest comfort and at my leisure. I wish to thank Professor Mühlbacher, as well as other members of the Institut, for their kindness and courtesy.<sup>26</sup>

#### LIBER DE NOVITATIBUS HUIUS TEMPORIS

Ad te, Romane pontifex Adriane, patrem et dominum meum loquar, cum sim pulvis et cinis, ausu loquendi non temerario, sed, ut arbitrator, necessario. Denique in hoc tempore apostolatus tui non solum flumina secularis concupiscentie regnantis in clero absque regulis tam synodalibus quam cenobitalibus conversante illiduntur domui Dei supra petram fundate,<sup>1</sup> Petro commisse, sed et ventorum nimius impetus ipsa domus huius fundamenta per quorundam ventosam loquacitatem subvertere nititur. Et quidem contra insanias clericorum seculariter ac plusquam laicaliter luxuriantium et gratiam Domini transferentium in suas luxurias, dum perverse consumunt facultates ecclesiasticas, iam saluberrima decreta promulgata sunt in conciliis ac decretis praedecessorum tuorum clericos incestuosos<sup>2</sup> et ambitiosos dampnantium et interdictum, *quorum crimina manifesta sunt precedentia ad iudicium*,<sup>3</sup> ita ut eos accusari ac testibus convinci non sit magis necessarium quam fornicatorem illum publicum, quem Paulus apostolus iudicavit non tam examinandum quam dampnandum et quasi vetus fermentum expurgandum.<sup>4</sup> (2) Que nimirum decreta, si manciparentur effectui contra illusiones fluminum domui Dei, sicut apparet illisque satis utiliter esset consultum.<sup>5</sup> Super quibus aut effectui mancipandis aut eorum praevaricatoribus et neglectoribus digne castigandis memini a mea parvitate directam epistolam, quam et cognovi per domnum Babenbergensem<sup>6</sup> sancto apostolatu

<sup>26</sup> For Gerhoh and his works and life the following literature may be consulted: STÜLZ, "Probst Gerhoh I. von Reichersberg," in *Denkschriften der Wiener Academie, phil.-hist. Kl.*, Vol. I, pp. 113 ff.; BACH, "Probst Gerhoh I. von Reichersberg," in *Oesterr. Vierteljahrsschrift für kath. Theologie*, Vol. IV (1865), pp. 19 ff.; NOBBE, "Gerhoh von Reichersberg," Leipzig, 1881; RIBBECK, "Gerhoh von Reichersberg und seine Ideen über das Verhältniss zwischen Staat und Kirche," *Forschungen zur deutschen Geschichte*, Vol. XXIV, pp. 1 ff., and Vol. XXV, pp. 556 ff.; GRISAR, "Die Investiturfrage nach ungedruckten Schriften Gerhoh's," *Zeitschrift für kath. Theologie*, Vol. IX (1885), pp. 536 ff.; SCHEIBELBERGER, *Opera omnia Gerhohi*, Lincii, 1875; also in *Oesterr. Vierteljahrsschrift für kath. Theologie*, Vol. X (1871), pp. 565 ff.; STURMHÖFEL, *Der geschichtliche*

*Inhalt von Gerhoh's von Reichersberg erstem Buche über die Erforschung des Antichrists*, Leipziger Programm, 1887; also, Gerhoh über die Sittenzustände der zeitgenössischen Geistlichkeit, Programm der Thomas Schule, Leipzig, 1888; SACKUR, *Monumenta Germaniae Historica, Libelli de Lite Imperatorum et Pontificum*, Vol. III, pp. 131 ff.

<sup>1</sup> Matt. 7:25, 16:18. In the MS. *æ* is often indicated by an *e* with a cedilla; in the printed text this is represented by *e*, or, if occurring in italicised passages, by *e*.

<sup>2</sup> Married clergy are included as well as those living with concubines.

<sup>3</sup> 1 Tim. 5:24. <sup>4</sup> 1 Cor. 5:5 ff. <sup>5</sup> *Libelli*, confultum.

<sup>6</sup> Eberhard II., bishop of Bamberg, 1146-70; cf. WAGNER, *Eberhard II.*, p. 90.



tuo praesentatam, cuius initium fuit: *Tu es qui venturus es an alium expectamus?*<sup>1</sup> Expectamus enim sicut illic partim significavimus, partim prudentie tue per se animadvertendum reservavimus, talem sedis apostolice antistitem, cui videlicet velut alteri Iosue dicat Dominus: *Confortare et esto robustus; tu enim introduces populum meum in terram lacte et melle manantem.*<sup>2</sup> Talem terram in suis decretis Innocentius et Eugenius<sup>3</sup> egregii predecessores tui quasi Moyses et Aaron praeostenderunt, sed morte praeventi non introierunt neque introduxerunt populum Dei in eam, non valentes in diebus suis effectui mancipare que statuerant de concubinariis et conducticiis abiciendis, de falsis penitentiis cavendis, de incendiariis puniendis, de clericis disciplinandis, de sanctimonialibus claustrali custodie<sup>4</sup> mancipandis, de treuga servanda et de ceteris (3) ad decorem domus Dei pertinentibus novasque abusiones competenter medicantibus. Quia ergo *verbum de ore Dei* per Petri successores *egressum non revertetur ad eum vacuum, sed faciet quaecumque*<sup>5</sup> *voluit et prosperabitur in his ad que missum est,*<sup>6</sup> *pusille fidei*<sup>7</sup> arguendi sumus, nisi mandata sedis apostolice salubriter emissa credamus effectui quandoque mancipanda, ita ut aut flectant aut frangant, flectant consentaneos ad obedientiam, frangant adversarios ad penam.

## I. DE VERBO DEI VICTORIOSO

*Sic omne verbum quod natum et egressum est a Deo vincit mundum. Et hec est victoria que vincit mundum, fides nostra,*<sup>8</sup> qua credimus non esse impossibile apud Deum omne verbum de ipso natum et celis enarrantibus mundo annuntiatum. *Nonne in omnem terram exivit sonus memoratorum sedis apostolice mandatorum? Nonne celi erant ipsi enarrantes gloriam Dei ac decorem domus Dei?*<sup>9</sup> Sed sunt quidam qui non credunt possibilia que ipsi annuntiaverunt observanda, quos non tam pusille seu modice quam vel minime vel nullius fidei arguendos estimo, utpote non credentes neque Deo neque ipsius archangelo qui cum virginis conceptum praeununciasset simulque conceptum sterilis iam praeteritum annuntiasset<sup>10</sup> consequenter de ceteris (4) a se praeununciatis adiunxit quia *non erit impossibile apud Deum omne verbum.*<sup>11</sup> Ergo iuxta verbum ipsius Christus *regnabit in domo Iacob in eternum et regni eius non erit finis.*<sup>12</sup> Domus vero Iacob recte intelligitur sancta ecclesia beato Petro velut alteri Iacob credita. Quippe ut in veteri testamento cum sint aliquibus personis nomina vel posita ut Ysaac,<sup>13</sup> vel aucta ut Abraha,<sup>14</sup> vel minuta ut Sare,<sup>15</sup> nulli omnino inter omnes illius temporis electos nomen legitur omnino mutatum, excepto solo Iacob, cui dictum est: *Non vocaberis ultra Iacob, sed Israel erit nomen tuum.*<sup>16</sup> Sic et in novo testamento soli Petro nomen est mutatum, dicente ad eum Domino: *Simon Bariona, tu vocaberis Cephas quod interpretatur Petrus.*<sup>17</sup>

## II. DE NOMINE PETRI

Et qua ratione haut incongrue successoribus eius nova nomina ponuntur, cum in sedem ipsius intronizantur.<sup>18</sup> Ille in fortitudine luctaminis directus ad angelum<sup>19</sup> talem obtinuit benedictionem, ut ei diceretur quum *si contra Deum fortis fuisti quanto magis contra homines praevaleris?* Iste in fortitudine fidei roboratus audivit sibi a Domino dici: *Tu es Petrus et super hanc petram edificabo ecclesiam meam et porte inferi non prevalebunt adversus eam.*<sup>20</sup> Ille Rachelem propter eius pulchritudine (5) plus amavit, sed Liam<sup>21</sup> noctu suppositam propter

<sup>1</sup> Luke 7:19. This letter of Gerhoh is not known to exist; cf. Gerhoh's Letters, MIGNE, *Pat. Lat.*, Vol. CXCH, col. 489. "Ad A. magistrum: Nunc autem successoribus eius, Adriano Papae, cum sim facie ignotus et iam secundo ei scripta meae parvitatibus fuerint porrecta, primo per dominum Babenbergensem," etc.

<sup>2</sup> Deut. 31:7; Josh. 1:6.

<sup>3</sup> Innocent II., 1130-43; Eugene III., 1145-53, both of whom legislated against certain abuses in the church.

<sup>4</sup> Libelli, custodia.

<sup>5</sup> Libelli, quicumque.

<sup>6</sup> Isa. 55:2.

<sup>7</sup> Luke 12:28.

<sup>8</sup> I John 5:4.

<sup>9</sup> Ps. 18:1 (Vulgate enumeration).

<sup>10</sup> Luke 1:26 ff.

<sup>11</sup> Luke 1:37.

<sup>12</sup> Luke 1:33.

<sup>13</sup> Gen. 17:19.

<sup>14</sup> Gen. 17:5.

<sup>15</sup> Gen. 17:13.

<sup>16</sup> Gen. 32:28.

<sup>17</sup> John 1:42.

<sup>18</sup> On his election Octavian assumed the name of John XII. (955-63), an example which has been followed by all successive popes.

<sup>19</sup> Gen. 32:24 ff.

<sup>20</sup> Matt. 16:18.

<sup>21</sup> Gen. 29:35.



ipsius fecunditatem patienter toleravit. Iste, in monte transfigurato Domino, quasi conspecta Rachelis pulchritudine, voluerat semper illic manere, dicens: *Domine, bonum est nos hic esse*.<sup>1</sup> Coactus tamen est ad inferiora descendens quasi Lyam tolerare visionemque Rachelis in monte sibi demonstratum nemini dicere nisi peracta Dominica resurrectione. Ille propter lasciviam filiam stupro depravatam et indisciplinatos filios inordinatos, eiusdem stupri ultores turbatus et a mansione sibi dilecta, Sichem, fugatus est,<sup>2</sup> quos etiam vasa iniquitatis nominat. Iste propter populum Romanum avaricie spiritu constupratum et filios quosdam Symeonisac Levi vasis iniquitatis bellantibus assimilatos coactus est nonnunquam et cogitur adhuc in suis successoribus fugere ab urbe Roma,<sup>3</sup> derelicta interdum sede sibi delectissima. Propter quod sicut ille in benedictione XII filiorum suorum de Symeon et Levi dixit: *Maledictus furor eorum, quia pertinax, et indignatio eorum, quia dura*,<sup>4</sup> depromens videlicet maledictionem pro benedictione; sic et Petrus Symonem magum sua maledictione in urbe Roma deiecit<sup>5</sup> et quivis<sup>6</sup> Petri successor, quemvis<sup>7</sup> eiusdem Symonis (6) magi successorem iusto zelo habet maledicere atque a benedictione bonorum filiorum scelus avaricie atque symonie odientium secernere. Atque utinam tu, Adriane, successor Petri apostoli, zelo debito accendaris contra successores Symonis magi negociantes in domo Domini. Certe, ut de illis taceam quorum plaga circumligata neque videri neque curari potest ab hominibus, quosque sibimet iudicandos reservat iudex altissimus in ecclesiis matricibus, *vulnus et livor et plaga tumens* abscondi non potest utpote neque *circumligata neque fota oleo*,<sup>8</sup> ubi absque velamine, sine pietatis tam virtute, que oleum est, quam specie, que velamen est, conductores ecclesias plebales et praebendas habentes cum suis conducticiis ita manifeste negotiantur, altaria Dei vertentes *in mensas nummulariorum*,<sup>9</sup> ut *eorum peccata manifesta sint precedentia ad iudicium*.<sup>10</sup> Huc accedit, quod in solitudinem redactis eorum dormitoriis *in cubilibus et impudiciis*<sup>11</sup> ita vivunt, ut nec viduas Deo devotas apostolus concedat sic vivere, contestans quod *vidua in deliciis vivens mortua est*.<sup>12</sup> At isti non solum in delicias verum et in luxuriam transferunt<sup>13</sup> gratiam Domini nostri (7) Jesu Christi. Quid ad hec facere credendus est rex ille qui, attestante angelo, *regnabit in domo Iacob in eternum et regni eius non erit finis*?<sup>14</sup> Profecto non aliud faciet in veritatis completionem, quam praedestinatum est in ipsius veritatis praefiguratione.

### III. DE RUBEN PRIMOGENITO LYE

Denique sicut Ruben cum esset *prior in donis, maior imperio*,<sup>15</sup> utpote primogenitus Iacob de Lia, cui sacerdotalis et imperialis honor debebatur, tamen quia *effusus est, sicut aqua*, dum per incontinentiam *ascendit cubile patris sui et maculavit stratum eius dormiendo*, scilicet cum Balam,<sup>16</sup> concubina patris sui patriarche Iacob, pro benedictione meruit maledictionem, ita et isti suo arbitratu benedicti coram Domino maledicti sunt. Dixit enim pater Iacob: *Ruben, primogenitus meus, fortitudo mea, principium doloris mei, prior in donis, maior imperio effusus es sicut aqua; non crescas, quia ascendisti cubile patris tui et maculasti stratum eius*.<sup>15</sup> Quod dicit "tu fortitudo mea, prior in donis, maior imperio," gravissima est yronia et inproperatio de amisso dignitatis tante titulo, qui ei tanquam (8) primogenito debebatur si non ascendisset cubile patris sui et maculasset stratum eius. Propterea sicut pro benedictione reputatur, quod bonis filiis Noe dictum est: *Crescite et multiplicamini et replete terram, sitque terror vester super cuncta animantia et bestias terre*,<sup>17</sup> sic pro maledictione reputatur, quod ad

<sup>1</sup> Matt. 17:1 ff.

<sup>2</sup> Gen., chap. 34.

<sup>6</sup> Libelli, quisquis.

<sup>7</sup> Libelli, quevis.

<sup>3</sup> A reference to the struggle between Adrian IV. and the commune of Rome. The papal court, expelled from Rome, was at that time at Benevento.

<sup>8</sup> Isa. 1:6.

<sup>9</sup> Matt. 21:12.

<sup>4</sup> Gen. 49:11.

<sup>10</sup> 1 Tim. 5:24.

<sup>11</sup> Rom. 13:13.

<sup>5</sup> A tradition, preserved in the Clementine Homilies and Recognitions, says that Simon Magus, Acts VIII, 9 ff., followed Peter to Rome and there entered into a contest with him, in which Peter was completely victorious.

<sup>12</sup> 1 Tim. 5:4 ff.

<sup>13</sup> Libelli, transfertur.

<sup>14</sup> Luke 1:33.

<sup>15</sup> Cf. Gen. 35:22, 49:3 f.

<sup>16</sup> Gen. 35:22.

<sup>17</sup> Gen. 9:1 f.

Ruben dixit Iacob: *Non crescas*; cui simile est quod Moyses dixit: *Vivat Ruben sitque parvus in numero*.<sup>1</sup> O utinam et nunc in domo Iacob simile iudicium procedat contra istos Rubenitas qui ascenderunt cubile Dei patris et maculaverunt stratum eius! Ascenderunt, inquam, per ambitionem et maculaverunt per pravam conversationem. Ascenderunt aliunde, *non per ostium intrantes in ovile ovium*<sup>2</sup> et maculaverunt ipsum ovile turpiter vivendo, perverse docendo, seu quod nequius est, ipsas oves perdendo et mactando; perdendo sibi consentientes, mactando et persequendo contradicentes. Tales fere per totam Germaniam et Galliam sunt kathedrales clerici et eorum conducticii. Quibus iam frequenter in domo Iacob dictum est, ut non crescerent, ne videlicet quisquam eorum in una ministrans ecclesia se superextendat ad ministrandum (9) in alia, sed sit quisque contentus vel una praebenda vel una plebali ecclesia, cum unaquaeque ecclesia, cui facultas suppetit, suum debeat habere sacerdotem similiterque unaquaeque congregatio debeat esse contenta uno cenobio, ne in pluribus cenobiis vel certe, ut verius dicamus, in pluribus synagogis unus clericus abutatur multis praebendis. Item in concilio papae Innocentii, praecipiente ipso cum assensu episcoporum et aliorum patrum assidentium, prohibiti sunt crescere, dum sub anathemate interdictum est, *ne canonici de sede episcopali ab electione episcoporum excludant religiosos viros per episcopatum constitutos, sed eorum consilio honesta et ydonea persona in episcopum eligatur. Quod si exclusis eisdem religiosis electio fuerit celebrata, quod absque eorum assensu et conventia factum fuerit, irritum habeatur et vacuum*.<sup>3</sup> Sic in synodo Lateranensi tanquam in domo Iacob dictum est, ut hi tales non crescant. Sed ipsi tamen crescunt et multiplicari non desinunt, nisi adhuc fortius dicatur id<sup>4</sup> ipsum scilicet, ut non crescant. Quomodo, ait quis, hoc fortius dici potest, quam dictum est? Synodalibus edictis et decretalibus mandatis quid fortius (10) dicendum est? Hoc profecto, quod ante suggesti<sup>5</sup> beate memorie papae Eugenio quodque in libello "*De Consideratione*" suggestum est eidem per sancte recordationis virum abbatem Clarendonensem,<sup>6</sup> ut videlicet, perquisitis neglectoribus episcopis, *malos perdat et vineam suam locet aliis agricolis qui reddant fructum*<sup>7</sup> temporibus suis, mandata<sup>8</sup> sedis apostolice servando et tam cenobia quam plebales ecclesias rationabiliter ordinando. Amplius adhuc fortius dicendum est, ut Rubenite isti<sup>9</sup> non crescant. Quia enim semel et simul auferri non possunt isti occupatores terre sancte, qui *in terra sanctorum inique agunt*,<sup>10</sup> ac propterea non videbunt gloriam Domini, firmiter indicendum est episcopis, ne aliquibus eorum decedentibus eorum consimiles in eorum loca subrogentur, sed ab eis liberata stipendia in usus Deo regulariter servientium et aliorum Christi pauperum dispensantur, sicut martyr et papa Urbanus in suis decretis mandat dicens: "*Ipse res singularum parrochiarum in ditione episcoporum, qui locum tenent apostolorum, erant et sunt adhuc et futuris semper debent esse temporibus, ex quibus episcopi et fideles eorum dispensatores omnibus communem vitam degere volentibus* (11) *ministrare cuncta necessaria debent, prout melius potuerint, ut nemo in eis egens inveniatur*."<sup>11</sup> Ecce audivimus consolationem dispositam per apostolos et apostolicos viros omnibus communem vitam eligentibus. Videmus autem e contrario magnam desolationem, cum stipendia spiritualis militie ac regularis vite in secularibus vanitates translate illis abundant, qui exinde huic seculo militant atque illi egentes angustiat et afflicti sunt, quibus dignus non est mundus. Adhuc autem si adtendis,

<sup>1</sup> Deut. 33:6.<sup>2</sup> John 10:1.<sup>3</sup> Cf. The Lateran Council, anno 1139 (not 1135), can. 28; MANSI, Vol. XXI, col. 533; HEFELE, *Conciliengeschichte*, Vol. V, 2d ed., p. 442. It was held by Innocent II., 1130-43.<sup>4</sup> Libelli, ad.<sup>5</sup> GERHOF's "Commentary on the LXIVth Psalm" is also called *De Corrupto Ecclesiae Statu*. Gerhoh composed it shortly after the Council of Rheims, 1148, and, when he was at Rome, 1151, probably presented it in person to Eugene III.<sup>6</sup> ST. BERNARD of Clairvaux, *De Consideratione libri quinque ad Eugenium III.* Begun in 1149, it was composedat intervals and sent to Eugene III. For the text of it, see MIGNE, *Pat. Lat.*, Vol. CLXXXII, cols. 727-808. For the frequent use Gerhoh made of the writings of St. Bernard, see HÜFFER, *Der heilige Bernard von Clairvaux*, Vol. I, p. 202. An uncritical work, but containing some just observations.<sup>7</sup> Luke 20:9-16, and Ps. 1:3.<sup>8</sup> Ms., mandatis.<sup>9</sup> Libelli, iste.<sup>10</sup> Prov. 2:22.<sup>11</sup> Urban I., 222-30; cf. HINSCHIUS, *Decretales Pseudo-Isidorianae et Capitula Angilramni*, p. 144; MANSI, Vol. I, col. 749; MIGNE, *Pat. Graeca*, Vol. X, col. 137.



abhominaciones maiores videbis. Nam cum sit magna desolatio, qua exposuimus auferri stipendia debita Deo militantibus in communi vita et ad hos transferri qui exinde militant huic seculo, illud procul dubio *abhominatio desolationis* est,<sup>1</sup> quod monachi et regulares canonici de agris aut vineis aut nutrimentis animalium suo sumptu elaboratis coguntur solvere decimas aut militibus aut secularibus clericis contra canones antiquos et novos. Nam de antiquis est illud Urbani, quod premisimus, cui multa similia invenire potest lector studiosus. De novis autem illa sunt que in conciliis Innocentii<sup>2</sup> (12) et Eugenii<sup>3</sup> super hoc habemus atque, ut *in ore*<sup>4</sup> non solum duorum,<sup>5</sup> sed et trium testium stet hoc iusticie verbum, tuo quoque, Adriane papa, statuto indigemus, quia, defuncto papa Eugenio, putatur a stultis mandatum eius pariter cum illo defuncto de decimis regularium canonicorum et monachorum non persolvendis, ubi manibus et sumptibus propriis elaborant suas terras. Nam de colonis eorum nulla est contradictio, quin illi de suis fructibus atque fetibus illuc persolvere suas decimas debeant, ubi suos infantes baptizant, *metentibus illis eorum carnalia qui eis persolvunt spiritualia*.<sup>6</sup> Spirituales autem viri, monachi et regulares canonici, qui a plebanis presbyteris nulla requirunt spiritualia, nimis iniuriose coguntur eis persolvere carnalia. O mira desolatio et detestabilis abhominatio desolationis, cum illi, quibus de decimis populi esset impendenda consolatio, angariantur secularibus personis de suis laboribus decimas dare, quas potius, episcopo dispensante, ipsi ab eis ad sui consolationem deberent accipere. Latuit hactenus ista desolationis abhominatio quasi *vulpecula foveas habens*,<sup>7</sup> dum veluti sub pallio iusticie pharisaiceque *mentam et rutam et omne holus*<sup>8</sup> (13) *addecimans*, graviora legis, iusticiam, scilicet, ac<sup>9</sup> misericordiam et fidem preterire solet, sic districte ab omnibus exigebantur decime, ut nec spirituales exciperentur persone, cum nec reges gentium exigant tributum a filiis, sed ab alienis. Neque adtenderunt vel<sup>10</sup> adtendere voluerunt episcopi praemissam doctrinam papae ac martyris Urbani, seu etiam pape Gregorii<sup>11</sup> scribentis ad Augustinum Anglorum episcopum, ut communi vita viventibus de faciendis portionibus nichil imponatur ubi omne, quod superest, piis et religiosis causis in usus pauperum est erogandum, iuxta illud evangelicum: *Quod superest date et omnia munda erunt vobis*.<sup>12</sup> Latuit, inquam, hec *vulpecula demoliens vineas*.<sup>13</sup> At nunc exagitata quasi latratibus canum dominicorum, videlicet, pontificum Romanorum Innocentii et Eugenii doctrinis apostolicis, eisdem iam defunctis, putat sibi liberum non iam dente vulpino, sed aprino, evidenter vastare vineas Domini Sabaoth. Sentiat ergo adhuc in te, pater Adriane, spiritum antecessorum tuorum vivere; sentiat, inquam, se acrius exagitandam bestia hec nequissima, que devoravit Ioseph,<sup>14</sup> nisi cesset a cepta<sup>15</sup> malicia.

## IV. DE IOSEPH PRIMOGENITO RACHELIS

Quia enim, ut supra diximus, dictum est ei sub nomine (14) Ruben ut non crescat in domo Iacob, nimis emulatur Ioseph filium accrescentem, cui dixit pater Iacob: *Filius accrescens Ioseph, filius accrescens, et decorus aspectu: filie discurrerunt super murum. Sed exasperaverunt eum, et iurgati sunt, invideruntque illi habentes iacula. Sedet in forti arcus eius et dissoluta sunt vincula brachiorum et manuum illius per manus potentis Iacob. Inde pastor egressus est lapis Israel. Deus patris tui erit adiutor tuus, et Omnipotens benedicet tibi benedictionibus celi desuper, benedictionibus abyssi iacentis deorsum, benedictionibus uberum et vulvae. Benedictiones patris tui confortate sunt benedictionibus patrum eius, donec veniret*

<sup>1</sup> Matt., 24:15; Dan. 9:27; 12:2.<sup>2</sup> Lateran Council, 1139, can. 10; MANSI, Vol. XXI, col. 528; HEFELE, Vol. V, 2d ed., p. 441.<sup>3</sup> Council at Rheims, 1148, can. 8; MANSI, Vol. XXI, col. 716; HEFELE, Vol. V, 2d ed., p. 512 ff. It was held by Eugene III.<sup>4</sup> Libelli, in more.<sup>5</sup> Matt. 18:16.<sup>7</sup> Matt. 8:20.<sup>6</sup> 1 Cor. 9:11.<sup>8</sup> Luke 11:42.<sup>9</sup> Libelli, et.<sup>10</sup> Libelli, neque.<sup>11</sup> Gregory I., 590-604, in his letter to Augustine, whom he had sent as a missionary (596) to the Anglo-Saxons; MIGNE, *Pat. Lat.*, Vol. LXXVII, col. 1184; Bk. XI, no. 64; Responsio prima. See also M. G. H., *Gregorii I. Papae Registrum Epistolarum*, Vol. II, p. 333, where it is numbered Bk. XI, 56a.<sup>12</sup> Luke 11:41.<sup>14</sup> Gen. 37:33.<sup>13</sup> Song of Sol. 2:15.<sup>15</sup> Libelli, accepta.

*desiderium collium eternorum: fiant in capite Ioseph et in vertice Nazarei inter fratres suos.*<sup>1</sup> Et quidem altiore sacramento hee benedictiones Ioseph a sanctis patribus exponuntur de ipso Christo patris altissimi primogenito. At tamen quoniam sicut scriptum est, *Inde pastor egressus est*, cui dixit verus ac summus Ioseph, *Si diligis me pasce oves meas*,<sup>2</sup> non incongrue de quovis pastore Christum diligente ac proinde sincero amoris affectu ipsius oves pascente omnia hec poterunt intelligi. Quia non solum senatus apostolorum princeps orbis terrarum principatum Ioseph (15) in tota terra Egypti dominantis representat, sed et omnis cetus virorum sanctorum, qui non ut Ruben de Lya sed sicut Ioseph de Rachele se natum contestatur, primo assimilatus ei per custodiam castitatis, cui multum cooperatur claustralis inclusio, sicut ille maluit pati carcerem quam ad placitum domine sue contra dominum suum violare fidem,<sup>3</sup> in quo comprobatus est amor domini sui, deinde per curam pastorem secundum quod ille dixit fratribus suis, *Ego pascam vos et parvulos vestros*.<sup>4</sup> Cui simile est quod primo examinatus est amor Petri erga Dominum et postea commissa est ei cura ovium, dicente Christo, *Amas me?* ac subiungente, *Pasce oves meas sive agnos meos*. Sic praeparatus est beatus Petrus velut alter Ioseph ad pascendos multos populos et etiam suos fratres, de quibus ei dictum est: *Confirma fratres tuos*.<sup>5</sup> Alioquin fame nimia imminente periret Egyptus, id est, totus mundus et infirmitate deficerent ipsi quoque fratres eius, episcopi, videlicet, partim officio et merito, partim solo nomine fratres. Neque vero soli beato Petro sed et cuilibet successori eius dictum illud Christi congruit: *Pasce oves meas et confirma fratres tuos*.<sup>6</sup> Unde ad te quoque, Adriane papa, illud pertinere non dubium est, quoniam tu, sine dubio, regularem vitam servando etiam ante papatum<sup>7</sup> praeventus es in benedictionibus dulcedinis a Ruben, filio Lye, (16) omnino alienis et super caput Ioseph sicut auditum est copiose thesaurizantis dicente patre Iacob: *Fiant in capite Ioseph et in vertice Nazarei inter fratres suos*. Considera, queso, nunc totum Ioseph, totum, videlicet, chorum spiritualium virorum de Rachele genitorum quos pater altissimus amat plurimum et ideo fratres eius oderunt illum nec possunt ei quicquam pacifice loqui. Hoc et in benedictione Ioseph notatum est ubi dictum est: *Exasperaverunt eum invideruntque illi habentes iacula*. Et tu, quidem, Romane pontifex, post Christum *caput Ioseph et vertex Nazarei* tamquam in alto positus non tangeris illorum sagittis, at ego miser et mei similes in imo positi, grandi experimento edocti, non indigemus nobis exponi quam vere dictum sit de uno filio Rachelis quod eventurum erat plurimis eiusdem filiis. *Exasperaverunt, inquit, eum et iurgati sunt, invideruntque illi habentes iacula*. O quoties isti exasperaverunt me habentes iacula, quibus fuissem graviter fossus, nisi quod sedes apostolica facta est mihi refugium a venenatis iaculis eorum! Unde et memor fatigationis mee praeterite represento tibi, patri, textum epistole quam inter huiuscemodi sagittarios nisi beate memorie papae Innocentio, cuius textus ita se habet.<sup>8</sup>

Innocentio divina favente clementia sedis apostolice (17) antistiti frater G[erhohus]sue sanctitatis qualiscumque servus devotas orationes cum obedientia. Domine, refugium tu factus es nobis in Domino, qui, priusquam fierent montes aut formarentur terra et orbis,<sup>9</sup> te praedestinavit nobis pium patronum contra violentias impiorum. Puto enim, si non esset nobis apostolice sedis asilum iam redacti essemus ad nichilum per iniquas potentias impiorum. Sed tu, beate vir, qui non soles abire in consilio impiorum, nec sedes in cathedra pestilentie,<sup>10</sup> sed in cathedra potestatis apostolice per tue pietatis eximium affectum, factus es nobis refugium, immo eterna Christi pietas, que regnat in corde tuo, facta est nobis turris fortitudinis a facie impiorum,<sup>11</sup> qui nos afflixerunt et affligunt. Petro Leonis tyrannizante<sup>12</sup> multa passi sumus ab eius fautoribus,<sup>13</sup> quando vidimus impium superexaltatum et

<sup>1</sup> Gen. 49:22-26.

<sup>2</sup> John 21:15 ff.

<sup>9</sup> Ps. 89:1 f.

<sup>3</sup> Gen. 39:7 ff.

<sup>4</sup> Gen. 45:7 and 10.

<sup>10</sup> Ps. 1:1

<sup>5</sup> Luke 22:32.

<sup>6</sup> John 21:17, Luke 22:32.

<sup>11</sup> Ps. 60:4.

<sup>7</sup> Adrian IV., before his elevation to the cardinalate, had been a member of the house of regular canons, known as St. Rufus, near Avignon.

<sup>8</sup> This letter is quoted by Gerhoh also in his letters, No. 21, MIGNE, *Pat. Lat.*, Vol. CXCI, col. 548.

<sup>12</sup> Petrus Leonis, better known as the anti-pope, Anacleto II., 1130-1139, who contested the election of Innocent II.

<sup>13</sup> Gerhoh here refers to the opposition he encountered when he declared that schismatics could not efficaciously perform the sacraments.



elevatum sicut cedros Lybani. Sed transivi et ecce non erat.<sup>1</sup> Hereses autem sunt, quia eas oportet esse apostolo asserente;<sup>2</sup> Inter has laboravimus et adhuc laboramus.<sup>3</sup> Nam pro eo quod aliquando scriptis ac dictis confutavimus hereticum sensum quorundam asserentium Christi corpus extra ecclesiam etiam ab excommunicatis confici, nisi tu, pater, mihi tunc fuisses in refugium, heretici me dampnassent quasi hereticum. Sed quia residuum bruci paratus est commedere locusta,<sup>4</sup> succedunt malis mala. Nam de fumo putei abyssi, ut Iohannes in Apocalypsi<sup>5</sup> previdit, nunc exierunt locuste, videlicet plures discipuli Petri Abaiolardi,<sup>6</sup> affirmantes hominem de virgine sumptum non esse Deum, sed ipsius Dei singulare habitaculum in (18) quo cum habitat omnis plenitudo divinitatis corporaliter;<sup>7</sup> non tamen dicunt ei convenire nomen Deitatis, aut Deus dicatur nisi figurativa locutione, qua continens pro contento, vel pro contento continens, nominamus. Est enim figurativa locutio, si habens pro habitu nominatur, quod plerumque solet fieri, uti manu factum templum vocamus ecclesiam propterea quod habet vel continet ecclesiam, id est, iustos in ea convocatos, et in evangelio, ubi dicitur: *Credidit ipse et domus eius tota*,<sup>8</sup> familie datur nomen domus, quia familiam habet vel continet domus. Ita, inquit, figurativa est locutio, quando vel homini Deum in se habenti assignamus nomen Dei, vel Deum in homine manentem dicimus hominem. Nos autem, quia Deum proprie hominem et hominem Deum predicamus, ne forte in vacuum curramus,<sup>9</sup> tibi pater, per latorem<sup>10</sup> presentium super questione hac misimus tractatum, quem si tua approbat auctoritas, iterum cantabo quod et antea cantavi: Domine, refugium tu factus es nobis, non quod confido<sup>11</sup> in te, mortali homine, sed in Petro, immo in petra, cuius fortitudini porte inferi non prevalebunt. Item postea inter similia pericula a papa Celestino suscepi scriptum consolatorium et confortatorium, cuius hoc est rescriptum; Celestinus<sup>12</sup> episcopus servus servorum Dei dilecto filio G[erhoh] Richerispergensis praeposito salutem et apostolicam benedictionem. Super tribulationibus et angustiis quas pro veritatis et iustitiae assertionem dilecti filii nostri G<sup>13</sup> diaconi cardinalis attestatione te sustinere accepimus, paterna tibi affectione compati-mur et in quibus secundum (19) Deum possumus opem tibi et consilium libenter impendimus. In quibus tanto maiorem patientiam te oportet habere quanto certius est tuam industriam easdem persecutiones pro defensione iustitiae sustinere. Scis enim nec novum esse nec insolitum quod iuxta apostolum qui pie volunt vivere in Christo persecutionem patiuntur<sup>14</sup> ab impiis et dissimilibus, quos Dominus in evangelio consolatur beatitudinem eternam illis repromittens. Beati, inquit, qui persecutionem patiuntur propter iustitiam.<sup>15</sup> Nos tamen pro debito officii nostri emulis tuis obviare et censura ecclesiastica eos cohibere volumus. Unde per presentia tibi scripta mandamus quatenus proxima domenica qua legitur: "Ego sum pastor bonus"<sup>16</sup> nostro te conspectui representes ut per te ipsum causa plenius cognita quieti et tranquillitati tue providere et sicut dilecto filio oportune tibi subvenire valeamus.—Datum Lat. VI, Kal. Feb.<sup>17</sup>

Novissime quoque innumeris expositis iaculis ad papam Eugenium confugi cuius et verbis et scriptis confortatus didici quam vere dictum sit in benedictionibus Ioseph: *Sedet in forti arcus eius et dissoluta sunt vincula brachiorum et manuum eius per manum potentis Iacob*.<sup>18</sup> Et ut<sup>19</sup> noveris tu, Adriane papa, quam clementer ille me respexit, considera ipsius epistolam qua dissoluta sunt vincula brachiorum et manuum mearum per manum potentis Iacob. Textus eius hic est: *Eugenius*<sup>20</sup> *episcopus servus servorum Dei dilecto filio G[erhoh] Richerispergensis praeposito salutem et apostolicam benedictionem. Scripta devotionis tue benigne recepimus et*

<sup>1</sup> Ps. 37:35 f.

<sup>2</sup> 1 Cor. 11:19.

<sup>3</sup> Cf. 1 Cor. 15:10, 2 Cor. 6:5, and 12:23, 27.

<sup>4</sup> Joel 1:4.

<sup>5</sup> Rev. 9:1 ff.

<sup>6</sup> Petrus Palatinus, known as Abelard, 1079–1142.

<sup>7</sup> Col. 2:9.

<sup>8</sup> John 4:53.

<sup>9</sup> Phil. 2:16, Gal. 2:2.

<sup>10</sup> Ruodigerus, a brother of Gerhoh, afterwards praepositus of Klosterneuburg, 1167–8. Cf. *M. G. H.*, SS., Vol. IX, p. 616.

<sup>11</sup> MS. Confida.

<sup>12</sup> Celestine II., 1143–4. For this letter, Cf. Jaffé-Löwenfeld, No. 8484, MIGNE, *Pat. Lat.*, Vol. CXCH, col. 578. Gerhoh quotes it also, in part, in his commentary on the 46th Psalm.

<sup>13</sup> Probably Guido, card. deacon of SS. Cosmas and

Damian, who had recently returned from an embassy to Bohemia. Gerhoh had accompanied him as far as Prague. He had been absent from Rome on this embassy from September 1142 to February 1144.

<sup>14</sup> 2 Tim. 3:12.

<sup>15</sup> Matt. 5:10.

<sup>16</sup> That is, the second Sunday after Easter. John 10:11. Gerhoh's account of his journey to Rome is found in MIGNE, *Pat. Lat.*, Vol. CXCH, col. 1106.

<sup>17</sup> That is, at the Lateran Palace, January 27, 1144.

<sup>18</sup> Gen. 49:24.

<sup>19</sup> Libelli, tu.

<sup>20</sup> Cf. J. L., No. 8922. Given at Sutri, May 16, 1146. Gerhoh quotes it also in his Commentary on Ps. 38. MIGNE, Vol. CXCH, col. 1378; *Libelli*, Vol. III, pp. 432 f.; also in Gerhoh's Letters, Nos. 17 and 21, MIGNE, *Pat. Lat.*, Vol. CXCH, cols. 567, 577.

*ferrorem tue religionis ex eorum inspectione manifeste cognovimus. Concaluit enim cor tuum intra te et in meditatione tua exardescit ignis.*<sup>1</sup> (20) *Ignitum quoque eloquium tuum vehementer. Super hoc itaque, quod contra pessimas novitates, commotiones quoque, que contra ecclesiam Dei et personas ecclesiasticas oriuntur, te zelo karitatis exardescere cognoscimus, paterno affectu gaudemus et devotionem tuam collaudamus. Verum quoniam bonum est incipere sed multo melius consummare, dilectionem tuam in Domino commonemus ut in bono proposito perseveres quia nos personam tuam tamquam litteratum et religiosum virum paterna karitate diligimus et in quibus secundum Deum possumus honorare et manu tenere volumus.*—Datum Sutri XVII. Kal. Iunii.

Audis, presul Romane Adriane, quomodo antecessores tui astiterunt mihi agonizanti et pugnanti ad bestias,<sup>2</sup> que sepe expugnauerunt me a iuventute mea, iam fere per annos XXX. prolongata iniquitate illorum *fabricantium supra dorsum meum*:<sup>3</sup> et necdum peracta est pugna. Etenim non potuerunt mihi sic prevalere, quin vincula brachiorum et manuum mearum semper essent soluta, ut adhuc gratia Dei sunt per manum potentis Iacob, protegente me pariter et divina gratia et apostolice sedis tutela fortissima contra Symonem<sup>4</sup> in domo Dei negociantem, contra Nycolaum<sup>5</sup> impurum, contra Neronis tyrannidem<sup>6</sup> adhuc in laicis quibusdam sevientem et Symoni mago contra Symonem Petrum nequiter faventem. His itaque quasi tribus amicis confutatis, Helyu<sup>7</sup> turbulentus contra me insurgit,<sup>8</sup> irruens ex adverso, quasi turbo ad dispergendum me, sic involvendo sententias sermonibus, prout ipsi videtur, exquisitis, sed prout ego arbitror, (21) imperitis, ut, nisi Dominus de turbine illi<sup>9</sup> pro me respondere dignetur, tota salus mea, immo totius ecclesie periclitetur graviter, quoniam, non ut cumque flumen illiditur domui Dei fundate supra petram, sed ipsam, quod auditu horrendum est, nititur subfodere aut findere, petram. Que, licet habeat foramina, in quibus nidificat columba, utpote clavis et lancea per milites cavata, non confringi vel scindi potuit aut poterit, sicut scriptum est: *Os non comminuetis ex eo quia nec tunica eius inconsutilis scissa fuit, sed integra permansit.*<sup>10</sup> Petra enim est Christus, petra indivisa, petra solida, nullius umquam susceptibilis divisionis, totus in paterna, totus in materna substantia, totus in ecclesia regnante in celis, totus in ecclesia perigrinante ac militante super terram, sursum invitans ad gloriam, deorsum confortans ad patientiam. Sic denique implet proprietatem sui nominis, quod est Emanuel,<sup>11</sup> ut, sicut in divinitate sua unus est cum patre Deus, ita quoque in humanitate sua sit etiam nobiscum Deus. In humanitate, inquam, sua non solum in sue persone unitatem sed in sue divinitatis unionem suscepta. Et de personali quidem unitate catholicus doctor Athanasius congruenter assignavit hanc similitudinem ut diceret sicut anima rationalis et caro unus est homo ita Deus et homo unus est Christus. Sed de naturarum ineffabili unione in creaturis plenam similitudinem non invenit. Que denique creatura sic transit in alteram sibi oppositam ut permaneat quod erat incipiens esse quod non erat? Et quidem conatus est beatus Papa Gregorius (22) in Ezechiele<sup>12</sup> tale quid ostendere, affirmans quod sicut aqua transit in christallum, permanente, videlicet, naturali essentia cum quantitate sua sed sola qualitate mutata, sic humana Christi natura, in similitudinem aque, primo fragilis, per resurrectionem firmata, veluti christalli soliditatem accepit. Verum ista similitudo longe minus habet ab assimilato. Transiens enim aqua in christallum non retinet in se totum quod habet essenziale, quia, cum essentialiter et non accidentaliter aqua sit humida, in christallum transiens et sicca effecta, desinit esse quod substantialiter erat. Non sic in Christo, non sic humanitas transiens in divinitatis gloriam desinet esse quod substantialiter erat, sed provecta est ultra quam erat. Ita ut, licet suscipiens divinitas non sit suscepta humanitas, vel e converso, quia indestructibilis est utriusque nature permansio, tamen quam vere corpus, accepta humanitate, permansens quod erat, sit quod non erat, id est, homo, et vere,

<sup>1</sup> Ps. 38:4.<sup>2</sup> 1 Cor. 15:32.<sup>3</sup> Ps. 123:3.<sup>7</sup> Job 32:1 ff.<sup>8</sup> Libelli, consurgit.<sup>4</sup> Cf. Acts 8:9.<sup>5</sup> Cf. Rev. 2:6, 15.<sup>9</sup> Job 38:1.<sup>10</sup> Cf. John 19:23.<sup>6</sup> Probably refers to the attitude of the nobility toward bishops and abbots who exercised temporal authority.<sup>11</sup> Isa. 7:14; Matt. 1:23.<sup>12</sup> Ezek. 1:22; cf. Eccles. 43:22.



accepta leonitate, sit leo, et similiter in substantiis aliis animalis corpori accedentibus et speciem constituentibus, idem invenis, ita nimirum, mediante anima, data et unita hominis corpori divinitas, in eo nomine *quod est super omne nomen*<sup>1</sup> contulit illi esse quod non erat, scilicet, Deus, manente tam divinitate quam humanitate quod erat, et, incipiente Deo esse quod non erat, subaudis homo, sicut et homo accepit esse quod non erat, scilicet, Deus. *Et hoc est mirabile in oculis nostris, primus novissimus et novissimus sit primus*<sup>2</sup> sicut ipse ait: *Ego sum a et ω, primus et novissimus*.<sup>3</sup> Quis magis (23) immo quid aliud est primum quam omnium principium? *Ego, inquit, principium qui et loquor vobis*;<sup>4</sup> quod ait *ego principium* refer ad *primum*; quod vero ait *qui et loquor vobis* refer ad *novissimum*. Denique cum omnia visibilia creasset Deus, novissime, in sexta die, creavit hominem, cui soli inter omnia visibilia dedit rationandi et loquendi facultatem. Deus igitur homo factus, a primo usque ad novissimum inclinatus, absque sue divinitatis defectu sed cum immenso nostre humanitatis profectu. Quo enim altius proficere haberet natura humana quam ut, aquatica fluxe mutabilitatis infirmitate deposita, in divine immutabilitatis christallinam soliditatem commutata esset super omnia *nomen habens quod super omne nomen est*.<sup>5</sup> Unde et in visione prophetica dicitur: *Et similitudo super capita animalium firmamenti quasi aspectus christalli horribilis et extenti super capita eorum desuper. Et super firmamentum quod erat imminens capiti eorum quasi aspectus lapidis saphyri similitudo throni, et super similitudinem throni similitudo quasi aspectus hominis desuper. Et vidi quasi speciem electri velut aspectum ignis intrinsecus per circuitum a lumbis eius desuper et a lumbis eius usque deorsum* (24) *vidi quasi speciem ignis splendentis in circuitu velut aspectum arcus cum fuerit in nube in die pluvie. Hic erat aspectus splendoris per gyrum. Hec visio similitudinis glorie Domini. Mira visionum dissimilitudo*.<sup>6</sup> Propheta vidit humanam in Christo naturam *quasi aspectum christalli*, videlicet commutatam a sua mutabilitate in soliditatem non angelicam, qualis et sanctis hominibus permittitur, sed omnino divinam. Nostris temporibus dialectici vel potius heretici vident eam vix ad angelorum dignitatem provectam. Ille vidit *super similitudinem throni quasi aspectum hominis desuper et quasi speciem electri*. Isti sub throno Dei cum ceteris electis hominibus collocant hominem assumptum quem negant in excelso throno sedere in paterne glorie coequalitate, vel potius unitate. Speciem quoque clarissimi electri de argento humanitatis et auro divinitatis confecti non aspiciunt, quia duas naturas in Christo ita coadunatas non credunt, sicut in electro aurum et argentum coadunantur, auro aliquatenus pallescente sed argente fulgescente. Nos autem cum propheta videmus aurum palluisse in Christo, cum posteriora dorsi eius in pallore auri quasi exinanita divinitatis plenitudine in passione (25) ipsius disparuerunt. Sed quia Moysi posteriora eius videnda et post hec sive per hec etiam gloria eius ostendenda promittebatur, nos cum ipso Moysi in foramine petre<sup>7</sup> stantes, ipsum, quem scimus humana passum, credimus in eadem natura, qua passus est, ad divina provectum, latenter quidem in virginali utero, sicut et David pater eius clam consecratus est in regem, nesciente Saule, in paterna domo.<sup>8</sup> Sicut autem ille, mortuo Saule, unctus est manifeste<sup>9</sup> super domum Iuda, universum Israel, sic et homo in Deum assumptus et solus electus ex milibus ad regnandum in domo Iacob in eternum idoneus, devicto mortis principe, manifeste *gloria et honore* divine claritatis *coronatus*, regnum tenet omnium seculorum non minore potentia, sapientia, clementia, disponens et gubernans omnia in humana sua natura quam ea creavit in divina. Hominis quippe filio datum est regnum et honor ab Antiquo dierum, sicut Danieli demonstratum est,<sup>10</sup> cui et iudicium datum est eo et in eo quod filius hominis est. Nam in eo quod filius Dei est numquam non habuit quod patris fuit. Unde et dicit: *Omnia que habet*

<sup>1</sup> Phil. 2:9.<sup>2</sup> Ps. 118:23; Matt. 21:42, 19:30, 20:16; Mark 9:35, 10:31; Luke 13:30.<sup>3</sup> Cf. Isa. 41:4, 44:6; Rev. 1:8, 17, 22:13.<sup>4</sup> John 8:25.<sup>6</sup> Ezek. 1:22, 26-28.<sup>8</sup> 1 Sam. 16.<sup>10</sup> Dan. 7.<sup>5</sup> Phil. 2:9.<sup>7</sup> Exod. 33:20 ff.<sup>9</sup> 2 Sam. 2.



*Pater mea sunt.*<sup>1</sup> Propter humanitatem vero dicit: *Omnia mihi tradita sunt a Patre meo.*<sup>2</sup> Quenam sunt illa omnia que (26) unacum patre suo Christus in divinitate sua semper habuit queque idem in humanitate sua sibi tradita dicit? Profecto illa sunt que pater habuit non solum sub se vel creata vel creanda, sed etiam que habuit et habet in se increata, eterna, et immensa; verbi gratia, potentia, sapientia, iusticia, veritas, bonitas, et cetera huiusmodi que in Deo non sunt multa sed unum; immo que in Deo non sunt aliud quam Deus unus omnino simplex. Esto, inquiunt, ut homini assumpto data sit verbi potentia, sapientia, bonitas et alia hominis capacitati capabilia. Eternitas vero et immensitas nature humane incapabilis est, nec illa eius capax est quia quod initium habet eternum fieri non potest, quodque circumscriptum est immensitatem capere non potest. Hec dicendo sapientes huius mundi praesumunt carnes agni aqua coctas manducare, dum sapientia humana, quam stultam fecit Deus, nituntur etiam inscrutabilia scrutari. Nos autem, caput cum pedibus vorare cupientes infirma humanitatis unacum altissimis divinitatis, non solum igne assa manducamus verum etiam igne comburendum relinquimus quod residuum fuerit.<sup>3</sup> Verbi gratia, non (27) solum credibile sed etiam intelligibile per gratiam Dei cognoscimus quod homo, in quo sunt omnes thesauri sapientie et scientie Dei, omnia scit sicut ei Petrus dicit: *Domine, tu omnia scis,*<sup>4</sup> ac proinde in sapientia vel scientia non est inferior vel minor patre suo, Deo eterno, a quo data est ei proprii filii naturalis filiatio. Item qui dicit: *Data est mihi omnis potestas in celo et in terra.*<sup>5</sup> non minus est potens patre suo omnipotente. Comedere seu vorare utcumque possumus talia non solum credibilia sed etiam intelligibilia. Que autem superexcedunt intellectum non hominum tantum sed etiam angelorum ut *pax Dei que exsuperat omnem sensum,*<sup>6</sup> ut etiam illud profundum iudiciorum Dei, quo *Iacob dilexit Esau autem odio habuit*<sup>7</sup> antequam quicquam facerent boni vel mali, seu etiam illud universale profundum, quo eternaliter omnes consimiles Iacob dilexit omnesque consimiles Esau odio habuit. Hec, inquam, et similia omnem intellectum superexcellencia de agni carnibus igni comburimus reservando ea *Spiritui Sancto qui scrutatur omnia etiam profunda Dei.*<sup>8</sup> De talibus est etiam illud quod, ut Ambrosius ait in Lucam, cui Deus Pater omnia dedit, eternitatem dedit maiestatemque transfudit. De his enim duobus, ut iam prelibavimus, maior est contradictio asserentibus nobis omnia, que habet Pater, data esse homini assumpto in Deum, Dei filium, sic ut ipse sit Deus, Dei filius, non geminata filii persona, sed unius persone manente natura gemina, et altera per alteram deificata, glorificata, et clarificata claritate, quam natura superior habuit priusquam mundus fieret. Gloria enim omnis non verbo sed carni acquirebatur, ut asserit Hylarius, (28) quia verbo nichil decesserat quod ei patris munere fuisset reddendum. Unde non verbum sed hominem constat et *paulominus ab angelis minoratum*<sup>9</sup> et, consummata obedientia *gloria et honore coronatum*, in throno maiestatis paterne, in quo ne inferior aut minor estimetur eterno et immenso patre, non ad sinistram sed ad dextram dicitur sedere,<sup>10</sup> iam non minor, glorificatus, qui minor fuerat quando vidimus eum non habentem *speciem neque decorem.*<sup>11</sup> Hinc Hylarius. Glorificaturus, inquit, filium pater maior est, glorificatus autem, filius minor non est. Aut quomodo minor est qui in gloria patris est? Dicis itaque mihi: Quomodo ergo verum est quod dicit Athanasius minor patre secundum humanitatem, si secundum Hylarium constiterit quod homo in throno glorie sublimatus et magnificatus non sit inferior aut minor patre? Ad hoc respondeo: Duos istos patres diversa non adversa hoc loco sentire cum alter eorum agat de natura humanitatis, que, sive in gloria, sive in pena, nunquam erit vel maior vel minor se ipsa, in quantum est natura humana que tanta est in minimo infante quanta in grandissimo gygante, tanta in Iuda perduto quanta in Petro salvato; alter vero agat de gloria que nature humane in Christo non solum naturaliter sed supernaturaliter est collata. Naturaliter enim natura humana, cum sit rationalis, per ipsam rationem capax est eterne sapientie, in aliis ad mensuram, in Christo sine mensura. *Non enim ad mensuram dedit Deus spiritum*<sup>12</sup> homini concepto per spiritum.

<sup>1</sup> John 16: 15.<sup>2</sup> Matt. 12: 9.<sup>3</sup> Exod. 12: 9, 10.<sup>4</sup> Rom. 9: 13.<sup>5</sup> 1 Cor. 2: 10.<sup>6</sup> Ps. 8: 6.<sup>4</sup> John 21: 17.<sup>5</sup> Matt. 28: 18.<sup>6</sup> Phil. 4: 7.<sup>10</sup> Heb. 1: 3.<sup>11</sup> Isa. 53: 2.<sup>12</sup> John 3: 34.

Sed quomodo sit capax eternitatis et immensitatis homo in tempore creatus et circumscriptus (29) naturalem sensum excedit, quia supra naturam est, fide apprehendendum non sensu vel intellectu comprehendendum. Fide ergo hoc tenemus et fidelibus id ipsum credendum non discutiendum suademus. Infidelibus autem cum Apostolo dicimus: *O homo, tu quis es qui respondeas Deo?*<sup>1</sup> Tu rationis acumine vis omnia secreta fidei penetrare quod esset fidem evacuare; quoniam, si vides non est fides. *Ego autem credidi, propterea locutus sum.*<sup>2</sup> Credidi Christo non solum dicenti ante mortem: *Pater maior me est,*<sup>3</sup> sed etiam post resurrectionem: *Data est mihi omnis potestas in celo et in terra.*<sup>4</sup> Credidi Apostolo asserenti quod is, qui modicum quam angeli minoratus est, excelsior celis factus est, tanto melior angelis effectus quanto differentius prae illis nomen hereditavit.<sup>5</sup> Notandum sane quod non dicit "*excelsior existens*" sed "*factus*" et "*melior angelis effectus*," ut eam naturam intelligas, vel, si non potes intelligere, saltem credas in Christo magnificatam, quam constat factam. Si enim dicis ceteros electos quos predestinavit illos et magnificavit,<sup>6</sup> quomodo is, qui predestinatus est filius Dei in unitate secundum spiritum sanctificationis, non est credendus magnificatus et nimis exaltatus super omnes celos usque ad orientem? Quo nomine intelligitur divinitas verbi de Patre oriens ortu eterno, neque tam proprie dicitur ortus quam oriens, eo quod fine caret eterna eius nativitas, quae ille splendor glorie paterne oritur de patre emplens nubem candidam, susceptam de matre, omni divinitatis plenitudine atque claritate, quod est eam elevatam esse ad orientem dum clarificata est claritate quam verbum habuit priusquam mundus fieret.<sup>7</sup> Sicut ipsi oranti ut clarificaretur (30) a Patre suo responsum est: *Et clarificavi et iterum clarificabo.*<sup>8</sup> Quod est dicere: "Clarificavi te in conceptione secundum quod predestinatus es filius meus in virtute secundum spiritum sanctificationis, qui est amor meus, quo in matre operante conceptus es, et iterum clarificabo secundum eundem spiritum sanctificationis et ex resurrectione mortuorum, per quam revelabitur gloria divina tibi, verbo, insita per naturam, sed tibi, homini, data per gratiam." Sic sic magnificatus Rex pacificus super omnes reges universe terre, sic exaltatus est super celos celorum ad orientem. Magnificatus, inquam, est non ad mensuram quia magnitudinis eius (31) non est finis, ac proinde immensitas illi data est non qualem fingit Manicheus,<sup>9</sup> cui videtur undique in infinitum protensus Deus, in quo errore fuit aliquando etiam beatus Augustinus quemadmodum in libro Confessionum suarum ipse de se scribens fatetur, sed qualem credit Christianus et qualem discipulis suis optat cognoscibilem fieri Paulus apostolus dicens: *Huius rei gratia flecto genua mea (et cetera usque) possitis comprehendere cum omnibus sanctis que sit latitudo, longitudo, sublimitas, et profundum.*<sup>10</sup> Noli dimensionibus istis tibi fingere grandissimum simulachrum pro Deo colendum, (32) sed agnosce latitudinem Dei, karitatem, qua omnia diligit et nichil odit eorum, que fecit, longitudinem vero eiusdem karitatis, eternitatem, quia longius eternitate nichil cogitari potest; sublimitatem, potentiam, profundum, sapientiam, quibus, quattuor nominibus cum tibi describitur Deus, magnus et immensus, non corporali protensione sed spirituali virtute attingens a fine usque ad finem, non habens ipse finem, respice simul et in crucem vel potius in crucifixum, Jesum Christum, et vide an et ibi tibi appareat eadem (33) latitudo, longitudo, sublimitas, et profundum, secundum que, magnum vel potius immensum poteris estimare ipsum crucifixum, cuius etiam secundum hominem latissima karitas non habet finem, cum diligit omnia que diligit et Pater, maxime illos quos Pater in ipso predestinavit ante constitutionem mundi<sup>11</sup> ut essent sancti et immaculati. Quia vero nichil antiquius hac praedestinatione, utique sicut nichil latius, ita nec longius est aliquid ista praedestinatorum dilectione. Quid autem profundius Christi etiam secundum hominem sapientia, cui datum est

<sup>1</sup> Rom 9:20.<sup>2</sup> Ps. 115:10.<sup>9</sup> Manichaeus, or Mani, born c. 215, A. D., near Ctesiphon. the founder of one of the most influential and widespread systems of Gnosticism. St. Augustine was for a time an adherent of his system. Cf. *The Confessions of St. Augustine*, Book III, 6, 14, etc.<sup>3</sup> John 14:28.<sup>4</sup> Matt. 28:18.<sup>5</sup> Ps. 8:6; Heb. 2:7, 7:26, 1:4.<sup>6</sup> Rom. 8:30.<sup>7</sup> John 17:5.<sup>8</sup> John 12:28.<sup>10</sup> Eph. 3:14-18.<sup>11</sup> Eph. 1:4.



nosse omnia; et quid sublimius eius potentia, cui datum est posse omnia quaecumque vult, sicut et Pater eius omnia quaecumque voluit fecit? Ex his, quae dicta sunt, manifestum est homines illos errasse de filio hominis, quorum alii dicebant eum esse Iohannem, alii Helyam, alii Hieremiam aut unum ex prophetis,<sup>1</sup> in quorum errore adhuc isti detinentur qui Christi magnitudinem sic metiuntur ad mensuram assumpte humanitatis, ut eidem humanitati negent inesse virtutem illius immense claritatis quam apud Deum Patrem filius Deus habuit priusquam mundus fieret.<sup>2</sup> Ex hac nimirum recte praedicatur homo assumptus (34) maior Iohanne Baptista, quia cum ille sit exinde magnus quod per Gabrielem angelum prece eius prenuntiatus est concipiendus a sterili, iste per eundem archangelum praenuntiatus est filius Dei altissimi nominandus et concipiendus a virgine.<sup>3</sup> Ille in spiritu et virtute Helye *viam Domino praeparaturus*,<sup>4</sup> iste in spiritu et virtute altissimi exultaturus ut *gygas ad currendum viam*<sup>5</sup> sibi paratam. Ille angelus ante faciem Domini missus,<sup>6</sup> iste angelus magni consilii consilium<sup>7</sup> ipsum perficere idoneus. De illo dictum est: *Erit enim magnus coram Domino*;<sup>8</sup> de isto scriptum est: *Magnus Dominus et laudabilis nimis et magnitudinis eius non est finis*.<sup>9</sup> Vere utique. Nam licet universa creatura Creatori comparata incomparabiliter inveniatur illo minor, tamen illa nova creatura quae in virgine de satis tribus<sup>10</sup> est in unum panem fermentata, coadunatis in unum tribus essentiis, anima, scilicet, rationali, carne humana, divinitate immensa et aeterna, in una sui persona, illa, inquam, creatura maior est mundo et licet in sui natura minor, tamen in gloria nominis, *quod est super omne nomen*,<sup>11</sup> sibi dati, Patri id ipsum nomen danti equalis, quoniam sicut Patris et filii et Spiritus sancti una est divinitas equalis, (35) gloria indivisa, potestas, ita verbi hominem in se deificantis, hominisque deificati, una est divinitas equalis, gloria indivisa, potestas, ac proinde in Dei filio adoranda est ipsius humanitas eque ut eius divinitas, quia, ut verbis utar magni Leonis,<sup>12</sup> quod in naturis Christi erat et est proprium non est in potestate diversum. Denique in sermone ad populum de Epiphania dicit inter cetera de tribus magis, *Quod cordibus credunt muneribus protestantur, thus Deo, mirram homini, aurum offerunt regi, scientes humanam divinamque naturam in unitate venerandam, quia quod erat in substantiis proprium non erat in potestate diversum*. Quod et sancti patres in Ephesina synodo perpendentes circa finem concilii dixerunt:<sup>13</sup> *Si quis audet dicere assumptum hominem a verbo coadorari cum Deo verbo oportere et conglorificari et connuncupari Deum, tamquam alterum alteri adiectio enim unius syllabe, id est, con, hoc cogit intelligi, et non magis una reverentia veneretur Emmanuel, unamque glorificationem dependerit, secundum quod verbum caro factum est, anathema sit*. Item, Johannes Damascenus in libro *De Dispensatione et Beneficio nostre Salutis*: Unus, ait, est Christus Dominus perfectus et (36) homo perfectus, quem adoramus cum Patre et Spiritu una adoratione, cum *αχραιστος* id est, immaculata carne ipsius, non carnem non adorandam esse dicentes. Adoratur enim in una verbi persona quae ipsi persona fuit vel facta fuit non creationem colentes. Non enim sicut nudam carnem adoramus, sed sicut Deitati unitam et sicut in unam prosopon et unam personam verbi duabus ipsius reductis naturis. Sic itaque devitamus prunam tangere propter ignem ligno coniunctum. Adoramus Christi utrumque propter Divinitatem carni unitam. Ecce audimus a Basilio Divinitatem carni unitam ac proinde ipsam carnem simul cum Divinitate adorandam. Legimus quoque in sermonibus Leonis Papae quod caro nostri generis caro est Deitatis et quod vera Divinitas veris se humane carnis sensibus induit.

<sup>1</sup> Matt. 16:13 ff.; Mark 8:27 ff.; Luke 9:18 ff.

<sup>2</sup> John 17:5.

<sup>3</sup> Cf. Luke 1.

<sup>4</sup> Matt. 3:3; Mark 1:3; Luke 3:4; John 1:23; Isa. 40:3.

<sup>5</sup> Ps. 18:6.

<sup>6</sup> Mark 1:2.

<sup>7</sup> Cf. Isa. 9:6; Ezek. 32:19; Eccles. 24:39.

<sup>8</sup> Luke 1:15.

<sup>9</sup> Ps. 144:3.

<sup>10</sup> Gen. 18:6.

<sup>11</sup> Phil. 2:9.

<sup>12</sup> Leo I., 440-61. Cf. *Sancti Leonis Magni Romani Pontificis Opera*, curantibus P. et H. Balleriniis, Venetiis,

1753; Tom. I, col. 113, sermo 31 (the first sermon on Epiphany); cf. sermo 3 in Epiphania, Cap. II.

<sup>13</sup> The Council of Ephesus, 431. Cf. MANSI, Vol. IV, col. 1092. A provincial synod, which met in Alexandria under the presidency of Cyrillus, bishop of Alexandria, wrote a letter to Nestorius, in which twelve of his heresies were anathematized. Of these twelve anathemas the one here quoted is the eighth. The synod demanded that Nestorius renounce his heresies and subscribe to these anathemas. Gerhoh quotes the translation of this synodical letter which was made by Dionysius Exiguus.



Legimus et in omelia Gregorii Papae Divinitatem calciatam. Legimus in Johanne *verbum carnem factum*.<sup>1</sup> Legimus in Hylario naturam inferiorem in naturam superiorem et natam et glorificatam. Quibus omnibus persuasi carnem deificatam et super omnes creaturas in Deo exaltatam adoramus. Quod nequaquam oporteret si, ut novi doctores asserunt, homo in solam personalem proprietatem assumptus Divinitatis in se veritatem non haberet (37). Quod et ipsi fatentur carnem, videlicet Christi, non adorandam. Unde mihi a quodam discipulorum magistri Gilberti<sup>2</sup> fuit obiectum quasi pro crimine ydolatrie quod carnem Christi adoro et adorandam doceo. Ego autem non ita Christum scindo ut aliud dicam carnem Christi quam carnem Christum, aliud carnem verbi aliud carnem verbum, dicente Hylario in libro XI: *Ascendit filius hominis ubi erat prius et quis sensus percipiet? Descendit de celo filius hominis qui in celis est et que hec ratio praestabit? Verbum caro factum est*.<sup>3</sup> *Fuit caro verbum, id est, homo Deus. Que hec verba loquentur?* Item, Ambrosio in ymno paschali dicente:

“Culpat caro, purgat caro,  
Regnat Deus, Dei caro,”<sup>4</sup>

confidenter praedico Dei carnem, sive mavis dicere, Deum carnem, in verbo, quod caro factum est, adorari oportere; neque in hoc est ullus error ydolatrie. Potes mihi ostendere Christi carnem humanam sine verbo? Quam si adoravero ero ydolater quia talis *caro non prodest quicquam*.<sup>5</sup> Sed carnem verbi sine verbo monstrari aut a verbo distingui omnino est impossibile, quoniam caro, quam sine verbo intellexeris, non caro verbi aut caro verbum dicenda seu credenda est, ac proinde minime adoranda. Sane quod ait Ieronimus, (38) “verbum verbum est et non caro, et caro caro est et non verbum,” non sic est intelligendum quod carnem verbi a verbo separaverit, sed hoc dicto utriusque permanentiam demonstravit, verbi scilicet et carnis, quia et caro verbo unita permansit caro, et verbum carni unitum permansit verbum, ut erat in principio, facta tamen verbi et carnis, Dei et hominis, assumptis et assumpti, tam ineffabili unione ut, sicut dicit Leo Papa,<sup>6</sup> *cum suo creatori creatura esset unita, nihil assumpto divinum, nihil assumpti deesset humanum*. Idem, loquens de passione Domini,<sup>7</sup> sic ait: *Cuius utique inanis fuisset species et nulli profutura imago tolerantie nisi vera Divinitas veris se humane carnis sensibus induisset et unus Dei atque hominis filius, aliunde intemerabilis, aliunde passibilis, mortale nostrum per suum immortale renovaret*. His atque aliis apostolice doctrine testimoniis de Divinitate hominis assumpti confirmata, non errat ecclesia hominem adorans quem Petrus apostolus Christum *filium Dei vivi* confitetur,<sup>8</sup> quia filius Dei per generationem non per adoptionem factus ei *ex semine David secundum carnem*<sup>9</sup> non potest non esse Deus, quomodo nec Pater eius potest non esse Deus. Unde unacum Patre atque in Patre suo est adorandus homo, Dei filius (39) et Deus factus. Factus est enim Deus, Dei filius, ex semine David<sup>10</sup> secundum carnem, qui semper Deus fuit secundum eternam Divinitatem. Factor, ut erat, permansit, sed factus quod non erat, esse cepit. Increatum permansit ac permanet increatum, et quod creatum est permanet creatum. Sed increate nature gloria tota in Christo create nature data est pro *nomen, quod est super omne nomen*<sup>11</sup> datum non verbo assumpti sed homini assumpto. Quia verbum numquam non habuit hoc nomen, quod quidem datum est homini primitus in conceptione, deinde in clarificatione. Sed plene manifestabitur in ultima resurrec-

<sup>1</sup> John 1:14.

<sup>2</sup> Gilbertus Porretanus, 1070-1154, was accused of heretical teachings in regard to the Trinity and the person of Jesus. St. Bernard succeeded in bringing him to trial, first in Paris, afterward in the Council at Rheims, 1148-9, but was unable to secure his condemnation. For his writings see Migne, *Pat. Lat.*, Vols. LXIV and CLXXXVIII.

<sup>3</sup> John 1:14.

<sup>4</sup> I have not been able to find these words in any collection of the hymns of St. Ambrose. They are found in

the hymn *Aeterne Rex Altissime*, which is appointed to be sung on Ascension day. Its authorship is uncertain, although Gerhoh attributes it to St. Ambrose.

<sup>5</sup> John 6:64.

<sup>6</sup> Leo I. Sermo XII, de passione Domini., cap. I.

<sup>7</sup> Leo I. Sermo XIV, de passione Domini., cap. II. By no means correctly quoted.

<sup>8</sup> Matt. 16:16.

<sup>9</sup> Rom. 1:3.

<sup>10</sup> Rom. 1:3.

<sup>11</sup> Phil. 2:9.

tione cum perficietur quod Ysayas praenuntiavit dicens: *Et erit lux lune sic lux solis, et lux solis erit septemplex sicut lux septem dierum in die qua alligaverit Dominus vulnus populi sui et percussuram plage eius sanaverit.*<sup>1</sup> Quenam est luna que tunc lucebit sicut sol absque varietatibus crementi et detrimenti, quibus nunc variatur in isto seculo, nisi ecclesia que tunc erit similis soli suo Deo? *Scimus*, inquit idem Iohannes, *quia cum apparuerit similes ei erimus quoniam videbimus eum sicuti est.*<sup>2</sup> Ipsa autem lux solis quanta erit? *"Sicut lux septem dierum,"* inquit. Quod est dicere, quante claritatis erat Deus verbum cum sex dierum fierent opera omnia et septimo die complerentur omnia per ipsum, tante in carne sua tunc erit apud Deum patrem suum. Hoc enim et ipse orans dicebat. *Et nunc clarifica me, tu, Pater, apud te ipsum, claritate, quam habui priusquam esset mundus apud te.*<sup>3</sup> Adoremus igitur Christum, solem iusticie, lumen de lumine, in divinitate sua lumen illuminans, non illuminatum; sed in humanitate sua illuminatum pariter et *illuminans omnem hominem venientem in hunc mundum,*<sup>4</sup> utpote iam *non sub modio positum, sed super candelabrum.*<sup>5</sup> Vide nunc, rogo, quam in alto posita est hec lucerna de testa cristallina humanitatis et igne divinitatis perfecta, que, cum sit lumen de lumine, nichil minus habet eo lumine de quo est. Ipsa quoque testa inde ignita totum habet lumen de quo et ipsa est lumen. Sicut enim in divinitate tres personas dicimus unum Deum simplicissimum, sic in incarnationis mysterio dicimus tres essentias, unum Christum, unam in trinitate personam, cuius in proprietatem cum sit homo assumptus, ita ut dicatur et sit Dei filius, quod est nomen proprium unius persone, in trinitate absque dubio credendum et confitendum est cum persone proprietate persone quoque (41) divinitatem pervenisse in hominem qui, sicut personaliter, accepta filiatione Dei, vere dicitur et est filius Dei, sic etiam substantialiter, accepta divinitate, filius<sup>6</sup> Dei Deus dicitur et est. Personarum quippe proprietates, ut ante nos dictum est, non aliud quam personas ipsasque, non aliud quam unum Deum, unam divinam substantiam, unam divinam naturam, unam divinam et summam maiestatem, catholica fides confitetur. Unde et si dividere quis conetur vel personas a substantia, vel proprietates a personis, nescio quomodo trinitatis se profiteri cultorem possit, qui in tantam rerum numerositatem excesserit. Dicamus itaque tres, sed non ad praeiudicium unitatis. Dicamus unum sed non ad confusionem trinitatis. Neque enim nomina vacua sunt nec absque significantia casse voces. Querit quis quomodo hoc possit esse, sufficiat ei tenere sic esse. Atque hoc non rationi perspicuum nec tamen opinioni ambiguum, sed fidei persuasum. *Sacramentum hoc magnum est*<sup>7</sup> et quidem venerandum non scrutandum. Quomodo pluralitas in unitate et hac unitate ut ipsa in pluralitate, scrutari hoc temeritas est, credere pietas est *nosse vita et vita eterna est.* (42) Nosse autem non est huius vite sed credere unitatem in trinitate, ac trinitatem in unitate, non solum in Deo sed etiam in Christo, in homine scilicet sic uncto ut anima et caro et utriusque unctio, que divinitas est, sit quedam trinitatis representatio et summe trinitatis quodammodo ab oppositis imitatio. Ibi namque tres persone una est essentia; hic, tres essentie una sunt persona. Ibi due persone habent ab una quicquid possunt, nec tamen ideo minus possunt quia unius cum ea omnipotentie sunt. Hic due essentie habent a tercia quicquid possunt quia unius cum ea omnipotentie sunt, iuxta sensum Leonis Papae dicentis, quod praemisimus, quia quod erat in substantiis proprium non erat in potestate diversum. Ibi una persona duarum est connexio. Hic duarum essentiarum, divinitatis scilicet atque carnis, anima rationalis est quasi copula, quoniam, ea mediante, divinitas est carni unita. Ibi a veris adoratoribus *adoratur Pater in spiritu et veritate.*<sup>8</sup> Hic item a veris adoratoribus adoratur divinitas in anima et carne. Ibi nec Pater filius, nec filius Pater est, aut spiritus sanctus, et tamen in patre totus filius et totus in verbo pater atque in ambobus totus amborum spiritus. Hic neque divinitas caro, neque caro divinitas, (43) neque amborum, quasi copula, rationalis anima vel divinitas vel caro est nominanda, et tamen in singulis horum totus Christus usque adeo indivisus,

<sup>1</sup> Isa. 30:26.<sup>2</sup> 1 John 3:2.<sup>5</sup> Matt. 5:15; Mark 4:21; Luke 8:16, 11:33.<sup>3</sup> John 17:5.<sup>4</sup> John 1:9.<sup>6</sup> MS., filii.<sup>7</sup> Eph., 5:32.<sup>8</sup> John 4:23 f.

ut per solam animam Christus in infernum descendisse, per solum corpus Christus mortuus et sepultus, per solam divinitatem verbo quidem innatam, carni vero et anime datam, semper ubique totus praesens credatur Christus, qui ad hoc descendit et ascendit ut adimpleret omnia. Si enim sol iste qui visibilis est ad hoc descendit et ascendit ut suo splendore contingat vel impleat omnia sub se posita, quid mirum de sole iusticie cognoscente occasum suum et ascendente ad orientem, hoc est, ad ipsam divinitatem, si affirmatur *adimplere omnia*<sup>1</sup> sub se posita, non utique corporali sed spirituali magnitudine, attingens a fine usque ad finem, fortiter illuminans omnia ita ut etiam in tenebris luceat quamquam *tenebre illum non comprehendant*,<sup>2</sup> quia ipse videt omnia quamquam non videatur ab omnibus, homo in Deum clarificatus et una in trinitate persona factus? Ibi principalis unitas trium personarum, hic principalis unio trium essentiarum. Inde constat, ut Leo dicit, humanam divinamque naturam in unitate venerandam, quia unio inferioris nature ad summam, quasi aeris ad lucem, representat oculis fidei unam diem.

## V. DE DIE SANCTIFICATO

Et hec est dies quam, suo (44) splendore nubem carnis implente, fecit Dominus, quemadmodum sol iste visibilis, nubem sive aerem suo splendore implendo, temporalem diem facit. *Hic est dies*<sup>3</sup> *sanctificatus, quem pater sanctificavit, et misit in mundum*, et vos, Iudeorum suppres, dicitis blasphemiam si quis illi assignat claritatem divinam, *quam etiam habuit apud patrem*<sup>4</sup> et accepit apud matrem, habuit in divinitate, accepit in humanitate ita ut humanitas et divinitas veneranda sit in unitate unius claritatis, unius glorie, unius potestatis. *Potestatem*, inquit, *habeo ponendi animam meam et iterum sumendi eam*.<sup>5</sup> Vox ista vox carnis est, que animam suam potenter posuit, potenterque resumpsit, nam neque animam semetipsam posuit neque divinitas, etiam intercidente morte, vel ab anima vel a corpore separata fuit. Cuius potentia in anima simul et carne permansit per quam et anima infernum debellare, et corpus et ipsam animam iterum sumere potuit, potentia ineffabili, potentia mirabili, potentia non accidentali et separabili, sed substantiali et inseparabili. Alioquin sine divinitatis potentia caro separatim intellecta *non prodesset quicquam*<sup>6</sup> comedentibus eam, neque humanitas in sua-(45)tura divinitati ullatenus est comparanda, cuius respectu dicitur Christus minor patre secundum humanitatem. Sed cum adtenditur non simpliciter caro, *que non prodest quicquam* sed caro verbi, caro Dei, deificata et glorificata, sedens in dextra Dei patris in gloria summa, rationabile iudicatur obsequium, quod in excelso throno adorat multitudo angelorum virum, cuius imperium non deest in eternum.

## VI. DE VIRO ADORANDO

O nefas! Angeli super celos celorum adorant virum et rane in luto coaxantes negant illum adorandum secundum quod vir dicitur, soli divinitati sic assignantes adorationem, ut ab ea separent ipsius humanitatem, contra doctrinam sanctorum patrum in synodo Ephesina, ut supra memoratum est, praecipientium ut utriusque nature in Christo una fiat adoratio, sed huiusmodi ranarum strepitu contempto, nos adtendamus veneranda sanctorum patrum testimonia quod affirmamus affirmantia, hoc scilicet, quod Iesus Christus in gloria Dei patris est, non solum secundum naturam altissimam eternaliter, sed etiam secundum naturam temporaliter quidem creatam, sed eterne divinitatis *gloria et honore coronatam*<sup>7</sup> ac proinde in gloria quam accepit, simul cum divinitate adorandam adoratione indissimili et prorsus equali, quoniam hominis<sup>8</sup> nature (46) unita verbi natura contulit illi *omnem altitudinem divitiarum*<sup>9</sup> paternarum. Quid enim deest huic viro in excelso throno sedenti de cunctis divitiis celi? Omnia sibi tradita sunt a patre cum hoc ei tradidit ut ipse non per adoptionem sed per generationem pater eius sit.

<sup>1</sup> Eph. 4:10.<sup>2</sup> John 1:5.<sup>4</sup> John 17:5.<sup>5</sup> John 10:18.<sup>3</sup> Ps. 117:24, confused with phrases from the gospel of St. John.<sup>6</sup> John 6:64.<sup>7</sup> Heb. 2:9.<sup>8</sup> Ms. homini.<sup>9</sup> Rom. 11:33.



Habet igitur omnia sibi tradita,<sup>1</sup> non seorsum a patre, sed in patre, quia, ut ecclesia canit, in patre totus filius et totus in verbo pater, ac proinde in patre habet quaecumque ipse pater habet. Verbi gratia, pater habet sub se omnia condita, homo in Dei filium natus, *gloria et honore coronatus*<sup>2</sup> et super opera manuum patris constitutus, eadem sub se habet omnia. Pater habet in se verbum potentissimum, per quod omnia, quaecumque voluit, potuit et fecit. Homo, Dei filius, habet in se idem verbum, per quod et ipse omnia, quaecumque voluit, potuit et fecit et adhuc potest ac facit in celo et in terra. Pater habet illud verbum sibi connaturale, homo in Deum assumptus habet idem verbum, non solum unitum sue persone, sed etiam coadunatum sue nature. Tantam denique tamque expressam unionis vim in se praefert ea persona, in qua Deus et homo unus est Christus, ut si duo illa de se invicem praedices, non erraveris, Deum videlicet hominem, et hominem Deum, vere catholiceque (47) pronuntians. Non autem similiter vel carnem de anima, vel animam de carne, nisi absurdissime praedicas, etsi similiter anima et caro unus sit homo. Nec mirum si non eque potens anima sit sua illa vitali et valida intentione conectere atque suis effectibus astringere carnem ut sibi divinitas illum hominem qui praedestinatus est filius Dei in virtute. Longa catena et fortis ad stringendum divina praedestinatio. Ab eterno est enim. Quid longius eternitate? Quid divinitate fortius? Inde est quod nec, morte incidente, ullatenus intercidi hec unitas potuit etsi carne et anima ab invicem separatis. Et fortassis hoc sensit ille qui se indignum professus est solvere *corrigiam calciamenti eius*.<sup>3</sup> Habet igitur, ut dixi, homo assumptus verbum patri connaturale coadunatum sue nature, quia et Deus in se hominem assumpsit et homo in Deum transivit, non versibilitate nature, sed Dei dignatione hominem in sui divinam dignitatem provehente. Item, pater habet in se spiritum sanctum de se procedentem, homo assumptus habet eundem cum omni plenitudine gratie et veritatis in se requiescentem. Habet pater potestatem iudicandi omnia, sed et omne (48) *iudicium dedit filio*<sup>4</sup> in humanitate, quod eternaliter habuit in divinitate.

## VII. OPPOSITIO

Quid contra hec dicere habet sapientia carnis, que *inimica est Deo*?<sup>5</sup> Quid hic loci habent eorum versutiae, qui contra hec locuntur, dicentes: *Si divinitas est incarnata, que non est aliud quam divinitas patris, ergo pater est incarnatus*. Ad quod respondemus quia qui hec dicunt, filium Dei concedunt incarnatum; sed filius Dei patris non est aliud quam ipse pater, licet sit alius quam pater. Consequitur ergo iuxta sensum eorum, filio incarnato, patrem quoque incarnatum esse. Respondent: *Filius est nomen proprietatis, que non est eadem vel idem cum proprietate patris, et ideo non consequitur, proprietate hac incarnata, que ad filium Dei pertinet, patrem quoque incarnatum esse, qui aliam proprietatem habet secundum quam pater dicitur*. Respondemus: Proprietas filii, quam conceditis incarnatam, vel idem est quod filius vel aliud. Si est aliud quam filius, ergo, secundum vos, non est incarnatus filius, sed, ut dicere soletis, proprietas eius forinsecus ei affixa est incarnata, et filii divinitas ab incarnatione penitus est aliena. Quod si verum esse constiterit non est unde salus hominum sperari possit, que (49) in eo maxime constitit, quod, ut dixit Gregorius, divinitas calciata *in Idumeam*<sup>6</sup> *extendit calciamentum suum*. Neque enim secundum vos divinitas est calciata humanitate si non est incarnata.

## VIII. SOLUTIO

Hic adtendum quod filius non est nomen proprietatis abstractim considerate, sed ipsius divinitatis cum quadam proprietate, ut cum dicimus, "Deus de Deo," "lumen de lumine," significamus filii personam sua proprietate a patre distinctam, quam etiam praedicamus incarnatam, non aliud intelligendo per substantiam filii quam ipsum filium, sicut nec proprietatem filii concedimus aliud esse quam ipsum filium, ne forte incidamus errorem illorum, qui Deum

<sup>1</sup> Matt. 11:27; Luke 10:22.<sup>2</sup> Heb. 2:9.<sup>3</sup> Rom. 8:7.<sup>4</sup> John 1:27.<sup>5</sup> John 5:22.<sup>6</sup> Ps. 59:10, 107:10.

asserunt compositum, neque tamen concedimus, filio incarnato, patrem quoque incarnatum credi oportere, quia hoc alienum est a catholica fide. Licet enim carnem Christi pater et spiritus sanctus repleverit, non tamen susceptione, sed maiestate, id factum credimus quia neque pater neque spiritus sanctus est incarnatus, quamvis tota divinitatis natura in una sui persona sit incarnata, sicut et tota humanitatis natura in una Christi persona est deificata, aliis personis tam divinitatis quam humanitatis a sacramento incarnationis omnino sequestratis. Christus enim sicut est persona divina sic est etiam persona humana, id est, ipse sine persone geminatione vel duplicatione, consistens ex (50) duabus et in duabus naturis, adorandus in utraque, quoniam, sicut beatus Augustinus dicit, et Deus in homine et homo in Deo est adorandus. Neque tamen adoratio ista, qua creaturam in Christo adoramus, ydolatria est, quia creatura ista creatori unita una est adoratione cum eo veneranda et honoranda.

## IX. DE DIADEMATE SALEMONIS

Si enim regem Salemonem, Deum, Dei filium, fabricatorem celi et terre, iure adoramus in diademate quo coronavit eum mater sua,<sup>1</sup> quomodo non eundem hominem hominis filium, fabricatorem totius ecclesie non adoremus in diademate quo coronavit eum pater suus? Mater coronavit Deum corona humanitatis igne sancti spiritus conflata ac fabricata. Pater coronavit hominem gloria et honore divine claritatis increate simul et immense. Mater Syon dicit homo filio Dei. Pater Deus filium hominis dicit filium suum, contestans hominem esse Deum, cui dicit: *Tu es Filius dilectus in quo mihi complacui.*<sup>2</sup> Non dicit: *Tu placuisti*, quod etiam cuilibet sanctorum dici potest, qui placens Deo dilectus est, sed, *In te*, ait, *mihi complacui*, quia in te manens extra te mihi placere non potui. Ego pater qui extra te filium numquam fui, cetera creata videns extra me laudavi eo quod erant valde bona;<sup>3</sup> te videns intra me laudo bonum, non accidentali dono, sed essentiali (51) bono, quo et quanto *nemo bonus nisi solus Deus.*<sup>4</sup> Ideo in te mihi complacui, quia bonitatem meam totam in te aspexi et dilexi etiam ante mundi constitutionem, cum ante creationem hominum *luderem in orbe terrarum et delicie tue fuissent esse cum filiis hominum.*<sup>5</sup> Egredientes *filie Syon vident regem Salemonem*<sup>6</sup> in diademate quo coronavit eum mater sua. Filie namque sunt et non filii, sola exteriora videntes que de matre sua habet Deus, non interiora, que de patre suo habet homo, cui et dixit ipse pater, *ego ero illi in patrem et ipse erit mihi in filium,*<sup>7</sup> quod evidenter claret homini potius assumpto quam verbo assumpti promissum, quia verbum numquam non fuit patri Deo filius, neque ipse pater fuit unquam ei non pater, quia sicut numquam fuit non Deus, ita numquam fuit non pater. Homini ergo in Deum, Dei filium, assumendo facta est illa patris promissio, quam commemoro [ra] vimus, et hec altera. *Ipsa invocabit me, pater meus es tu et ego primogenitum ponam illum excelsum prae regibus terrae.*<sup>8</sup> *Et ponam in seculum seculi sedem eius et thronum eius sicut dies celi.*<sup>9</sup> *Et sedes eius sicut sol in conspectu meo et sicut lux perfecta in eternum.*<sup>10</sup> Propter hec et similia contemplanda ingredimini, filii Syon, et videte regem Salemonem in diademate quo coronavit eum pater suus dignatione inestimabili, hominem dignum iudicans accipere omnia, que verbum eternaliter habuit. Unde non adulatione falsa sed laude verissima canit ecclesia. *Dignus est agnus qui occisus est accipere virtutem et divinitatem et sapientiam et fortitudinem et honorem et gloriam et benedictionem.*<sup>11</sup> Que omnia verbum eternaliter habuisse non dubitatur, sed homo assumptus eadem plenarie (52) accepisse cum gratiarum actione memoratur, quia totum, quod verbum habuit per naturam, datum est homini per gratiam, virtus scilicet qua invictissimus, divinitas qua Deus est, sapientia qua eque ut pater novit omnia praeiterita, praesentia et futura, fortitudo qua potest omnia quaecumque vult eque ut pater omnipotens honor et

<sup>1</sup> That is, the body of Christ.<sup>2</sup> Matt. 3:17; Mark 1:11; Luke 3:22; 2 Peter 1:17.<sup>3</sup> Gen. 1:10, 12, 18, etc.<sup>4</sup> Matt. 19:17; Luke 18:19; Mark 10:18.<sup>5</sup> Prov. 8:31.<sup>6</sup> 2 Kings 7:14; 1 Chron. 17:13; Heb. 1:5.<sup>7</sup> Ms. e. p. r. t.<sup>8</sup> 10 Ps. 88:27 ff.<sup>9</sup> Song of Songs 3:11.<sup>10</sup> Ms., s. d. celi.<sup>11</sup> Rev. 5:12.

gloria regni omnium seculorum et dominationis in omni generatione et generatione, benedictio qua dedit illi Deus sacerdotium magnum et beatificavit illum in gloria *fungi sacerdotio et habere laudem in nomine ipsius*.<sup>1</sup> *Ipsa est enim benedictus qui solus venit in nomine Domini*,<sup>2</sup> taliter scilicet ut sit nomen eius Dominus, non solum in illa natura, qua invisibilis permansit, sed etiam in illa qua visibilis venit.

## X. DE AUREA LAMINA

Unde hic pontifex non solum in aurea lamina<sup>3</sup> super caput eius posita expressum habet signum sanctitatis, nomen Dei fulgens in fronte, scilicet in superiore ipsius natura, caput enim Christi Deus, verum etiam in vestimento *et in femore suo scriptum habet, rex regum et Dominus dominantium*.<sup>4</sup> Vidit hoc Petrus apostolus, qui, de filio hominis interrogatus, ait: *Tu es Christus filius Dei vivi*.<sup>5</sup> Petri quoque successor Leo Papa id ipsum fide Petri eruditus agnovit dicens in sermone ad populum:<sup>6</sup> *Deus, Dei filius, de sempiterno et ingenito patre unigenitus, sempiternus manens, in forma Dei incommutabiliter atque intemporaliter habens non aliud esse quam pater, formam servi sine detrimento sue maiestatis accepit, ut in sua nos proveheret, non in nostra deficeret. Unde utrique nature, in suis proprietatibus permanenti tanta est unitatis facta communio, ut quicquid ibi Dei est, non sit ab homine separatum, et quicquid est (53) hominis non sit a divinitate divisum. Item idem: Absint a cordibus vestris dilirium diabolicarum inspirationum virulenta mendacia; et scientes quod sempiterna filii divinitas nullo apud patrem crevit augmento, prudenter advertite quod cui nature in Ada dictum est: Terra es et in terram ibis,<sup>8</sup> eidem in Christo dicitur: Sede a dextris meis<sup>9</sup>. Secundum illam naturam, qua Christus equalis est patri, numquam inferior fuit unigenitus sublimitate generatoris. Nec temporalis ei est cum patre gloria, qui ipsa est dextera Dei patris, de qua in Exodo dicitur: Dextera tu a Domine glorificata est in virtute.<sup>10</sup> Et in Ysaya: Domine, quis credidit auditui nostro et brachium Domini cui revelatum est?<sup>11</sup> Idem quoque ut nomen Domini tam in vestimento et in femore quam in capitis aurea corona etiam populo videndum et legendum proponeret in sermone ad populum de Epiphania (Leo) dicit inter cetera:<sup>12</sup> Adorant itaque magi Dominum et offerunt munera ut impleretur quod ait ille praecipuus prophetarum David: Afferte Domino patrie gentium, afferte Domino gloriam et honorem.<sup>13</sup> "Domino et Domino" quod ait, Dominum illum esse secundum Deum Dominum et secundum hominem mystico sermone declarat. Quod enim Deus est creator est mundi, quod homo est redemptor est mundi. Quomodo ergo non privilegio utriusque sub-(54)stantie Dominus est omnium Christus, qui sibi universa aut creatione aut redemptione subegit? Afferte Domino gloriam et honorem. Honoris est ergo, karissimi, quod offerunt gentiles munera, glorie quod adorant. Hec apostolice fidei sanissima testimonia non ita suscipimus ut in Christo Deum et hominem, duos dominos praedicari estimemus, quia quod erat in substantiis proprium non erat in potestate diversum, ait idem Leo Papa, ut iam supra memoravimus, atque ideo verbi et hominis assumpti unum dominium, una potestas, una virtus, una sapientia, una fortitudo, una plenitudo divinitatis, que et in verbo est naturaliter et in homine assumpto inhabitat corporaliter, id est, incorporata et incarnata. Si queris quomodo id fieri potuerit audi beatum Gregorium prudentie humane ista mysteria claudentem et fidei sane aperientem. Quis, inquit, investigare potest quomodo corporatur verbum, quomodo summus et vivificator spiritus intra uterum virginis animatur? Cessa igitur investigare quomodo ista ininvestigabilia fieri potuerint et crede quod angelus virgini credendum persuasit, quia scilicet non est impossibile apud Deum omne verbum.*

<sup>1</sup> Ms. h. l. i. n. i; Ex. 28:1; Eccles. 45:19.

<sup>2</sup> Matt. 21:9, 23:39; Mark 11:10; Luke 13:35.

<sup>3</sup> Exod. 28:38. <sup>4</sup> Rev. 19:16. <sup>5</sup> Matt. 16:16.

<sup>6</sup> Leo I., Sermo VIII, *In Nativitate Domini*, cap. I.

<sup>7</sup> Leo I., Sermo VIII, *In Nativitate Domini*, cap. VI.

<sup>8</sup> Gen. 3:19.

<sup>9</sup> Ps. 109:1; Matt. 22:24; Mark 12:32; Luke 20:42.

<sup>10</sup> Exod. 15:6.

<sup>11</sup> Isa. 53:1; John 12:38.

<sup>12</sup> What follows appears to be a free paraphrase of several passages. It seems also that the copyist has omitted something.

<sup>13</sup> Ps. 95:7.



Cum ergo audis verbum carnem factum, crede hoc factum sine ipsius verbi permutatione, sed cum ineffabili (55) carnis mutatione, permanente siquidem naturalis essentie proprietate, sed accedente veteri substantie illa novitate, de qua dixit Ieremias: *Faciet novum Dominus super terram, femina circumdabit virum.*<sup>1</sup>

#### XI. DE VETERI HOMINE AC NOVO

*Primus et vetus homo de terra terrenus, secundus et novus homo de celo celestis.*<sup>2</sup> An non mirabile ac novum est hoc ut celestis homo de celo terrenam simul et celestem naturam in se habens ipsam terrenam super omnes celos in semetipso exaltaverit atque omni plenitudine divinitatis corporaliter inhabitantis ditaverit? Alieni sint a nobis, qui personam verbi a natura ipsius alienantes ita personam dicunt incarnatam ut inde separent ipsius verbi naturam. Inde est quod ipsi delirantes putant fideles delirare in canticis spiritalibus ubi canunt:

Mirabilis natura  
Mirifice induta,<sup>3</sup>

assumens quod non erat, manens quod erat. Induitur natura divinitas humana. Quis audit talia, dic, rogo, facta? Talia canentibus ecclesie filiis in incarnatione Dei gloriantibus illi movent risum, nescio quam personam fingentes incarnatam, quæ, ut illi dicunt, non est substantia divina, cum nec persona hominis aliquatenus fingi possit, que non sit substantia rationalis. Equidem et hoc ipsi fatentur esse descriptionem persone, substantia rationalis individua.

#### XII DE PERSONIS

Que descriptio tam divinis quam et humanis personis adaptatur, quoniam sicut Petrus, Paulus, et Andreas tres humane persone sunt, quarum quisque substantia rationalis est, ita pater et filius et spiritus sanctus tres divine sunt persone, quarum quisque substantia rationalis est. Et potest quidem aliquomodo significari substantia (56) sine persona, ut cum dicimus: Deus est ineffabilis maiestas continens omnia creata, vel homo est omnis creatura secundum quod dicitur: *Praedicate evangelium omni creature.*<sup>4</sup> In istis enim propositionibus natura supposita est non persona vel Dei vel hominis, quamquam extra personas nec Dei nec hominis naturam invenias, licet eam sine respectu personali vel supponere vel praedicare competenter valeas. Verum personas extra substantias vel naturas suas velle significare nichil est aliud quam delirare, ut, verbi gratia, si patris personam in trinitate intelligas, vel intelligendam suadeas non esse Deum, aut Petri personam non esse hominem. Propterea tam in theologia quam in phisica rectius praedicamus substantiam de persona quam personam de substantia, quamquam interdum videatur in divinis praedicatum et substantia subpositum, ut cum dicimus inmensus pater, inmensus filius, inmensus et spiritus sanctus, item eternus pater, eternus filius, eternus et spiritus sanctus, item, omnipotens pater, omnipotens filius, omnipotens et spiritus sanctus, item, increatus pater, increatus filius, increatus et spiritus sanctus. Istis enuntiationibus videntur persone praedicari et substantia supponi. Verum non ita est, quoniam convenientius de unoquoque trium praedicatur quod sit omnipotens, eternus, inmensus, increatus, absque omni falsitatis scrupolo, quam si de eterno, inmenso, increato, et omnipotente praedices personas. Unde ubi dicit Iohannes: *Deus erat verbum,*<sup>5</sup> tractatores huius dicti asserunt verbum supponi, Deum praedicari. Et recte nimirum, quia supposita persona inevitabiliter coherens intelligitur persone substantia, ut Petrus est homo, Paulus est homo, Andreas est homo. Item, pater est Deus, filius est Deus, spiritus sanctus est Deus. Homine autem vel Deo supposito, ut verbi gratia, si dicas, homo est Petrus, Deus est pater, vera quidem est connexio, sed (57) inconsequens. Non

<sup>1</sup> Jer. 31:22.

<sup>2</sup> 1 Cor. 15:47.

<sup>4</sup> Mark 16:15.

<sup>5</sup> John 1:1.

<sup>3</sup>I have not been able to discover from what poem these lines are quoted.

enim quem hominem esse proposueris consequenter Petrum affirmare poteris, quemadmodum quem Petrum esse proponis consequenter hominem inevitabili veritate intelligis. Ita etiam in theologia, quem patrem proponis, hunc Deum omnipotentem, eternum, immensum, increatum consequenter intelligere debes. At non ita quem omnipotentem Deum, eternum, immensum, proponis consequenter esse patrem est inevitabile, cum possit aut filius aut spiritus sanctus ibidem intelligi. Et est quidem veritas in propositione, qua dicitur, Deus est pater, sed est inconsequentia in locutione. Inconsequentia tamen locutionum non aufert veritatem dictorum. Necesse est autem esse inconsequentia locutionis ubi non fuerit consequentia suppositionis, neque tamen praeiudicat veritati dictorum inconsequens connexio dictionum. Est ergo verum si dixerō, immensus pater, id est, qui immensus est ipse pater est, ut immensus habeatur pro subiecto, et pater pro praedicato, sed est inconsequens connexio dictionum, dum substantia, quae trium communis est, subicitur et persona singularis praedicatur, quae ad tale subiectum necessario non connectitur, cum et alia persona de illo possit intelligi. At si, ut ratio connexionis exigit, persona supponatur, quicquid connaturales persone habent substantiale, totum inevitabiliter connectitur uni persone supposite, ut pater est immensus, omnipotens, eternus, et cetera huiusmodi. Item Petrus est homo, animal, corpus. Quae connexio communium praedicatorum ad singularia subiecta ita est inevitabilis, ut quicquid de singulari persona qualibet supposita praedicamus, etiam de qualibet eius regulari praedicato praedicare possis, ut, verbi (58) gratia, si vere proposueris Petrum esse crucifixum, consequenter inferre poteris hominem et animal et corpus et Christianum et apostolum crucifixum. Non autem e converso, si proposueris hominem vel apostolum vel Christianum esse crucifixum, poteris inferre Petrum crucifixum, licet hoc verum sit, quoniam eadem ratione probaretur et Paulus crucifixus, quod falsum est. Eodem modo si proponas Deum, Dominum glorie, crucifixum non inde consequitur filium Dei esse crucifixum, licet hoc verum sit, quoniam, si hoc esset consequens, eadem ratione probaretur et pater crucifixus, quod falsum est. Proposito autem, quod filius Dei sit crucifixus, inevitabiliter consequitur Deum, Dominum glorie, crucifixum. Hinc est quod, filio Dei incarnato et passo, consequenter et confidenter asserimus Deum omnipotentem incarnatum et passum. Neque tamen, Deo incarnato et passo, consequitur patrem aut spiritum sanctum esse incarnatum, sicut, homine crucifixo, non est consequens Paulum vel Iohannem esse crucifixum. Frustra ergo laborant novi doctores huius temporis idcirco Dei substantiam sequestrando ab incarnatione ne, hac incarnata, videatur pater incarnatus et spiritus sanctus, quorum una est cum filio substantia, ut fides habet catholica, quia sicut in humanis, cum tota humanitatis natura sit in una sui persona, [tantum] illa paciente vel moriente, non necesse est alias eisdem nature personas conpati vel conmori. Sic in divinis, cum tota divinitatis natura sit in una qualibet sui persona, illa paciente vel moriente, non necesse est alias eiusdem nature personas conpati vel conmori. Passo igitur Deo, Dei filio, (59) non inde consequitur patrem quoque passum esse, ut voluerunt Sabelliani,<sup>1</sup> qui et a nomine sui erroris Patripassiani dicti sunt. In hoc permaxime decepti quod essentie uni atque, ut illi voluerunt, singulari tres proprietates attribuerunt, ita dicentes unus idemque Deus, quando vult, pater est, quando vult, filius, et quando vult, spiritus sanctus est, atque ita filio passo, consequens arbitrabantur etiam patrem passum.

## XIII. DE NOVIS SEMISABELLIANIS

Novi autem Semisabelliani et ipsi quoque essentiam Dei singularem praedicant et hoc nomen singularitatis magistri Gisilberti scripta super Boetium et apostolum frequenter inculcant. Ne autem sint omnino ad plenum Sabelliani, tres trium personarum proprietates essentie Dei, ut aiunt, singulari minime attribuunt, sed eas forinsecus affixas dicunt, nec eas Deum esse concedunt. Naturales inquiunt persone his, quibus unaqueque est aliquid, prius a se invicem sunt alie ut de his per hec a se aliis deinde huiusmodi extrinsecus affixa praedicamenta dicantur,

<sup>1</sup> Sabellius, *flor.* in the first half of the third century, was the head of that group of theologians who declared in favor of a modal trinity.

quorum oppositione, et si non sint alia, recte tamen eorum, quibus sunt, oppositione probantur esse alia. Theologice vero persone, quoniam eius, quo sunt, singularitate unum sunt, et simplicitate id quod sunt essentialium oppositione a se invicem alie esse non possunt, sed harum que dicte sunt extrinsecus affixarum rerum oppositione, a se invicem alie et probantur et sunt. Hec et similia magister Gillibertus in (60) suis glosis in Boetium dicens, deitatis unius tres personas vel earum proprietates asserit forinsecus affixas. Hoc dicendo, a Sabellianis dissentiens et eisdem in eo consentiens quod trium personarum essentiam praedicat singularem, quo dicto excludit patris et filii substantialem similitudinem et coequalitatem. Singularitas enim admittit vel similitudinem vel coequalitatem, quam bene admittit unitas. Atque ideo ne similitudinis aut equalitatis inter patrem et filium significatio perimeretur, singularitas reprobata et unitas commendata est ab orthodoxis doctoribus. Quod sanctus Hylarius in epistola de synodis affirmat hec inter cetera dicens.<sup>1</sup> *Secundum essentiam et virtutem et gloriam patri filius similis est—Ita similitudo proprietas est, proprietas equalitas est, et equalitas nichil differt. Que autem nichil differunt unum sunt, non unione persone, sed unitate substantie. Idem, unam substantiam proprietatis similitudinem intelligamus ut quod unum sunt non singularem significet, sed equales—Equalitas autem nature non potest esse nisi una sit, una vero non persone unitate, sed generis.*

## XIV. DE SIMILITUDINE PATRIS ET FILII

Non nos latet quosdam hereticos fuisse quorum errorem, ipsius auctoris tacito nomine commemorat Epiphanius,<sup>2</sup> qui sic inter patrem et filium affirmarent similitudinem ut negarent equalitatem, recipientes omeusyon,<sup>3</sup> quod est similis essentie, repudiantes omousyon,<sup>3</sup> quod est interpretatum (61) unius essentie. Quibus et consentit concilium Ariminense<sup>4</sup> ab Arrianis habitum. Hos iam dictus Hylarius ostendit reprobatos in synodis orientalibus, quibus catholici patres et omeusyon receperunt contra Sabellium et omousyon adversus Arrium;<sup>5</sup> omousyon, id est, unius essentie, propter id quod dicit filius: *Ego et pater unum sumus*;<sup>6</sup> omeusyon, id est, similis essentie, propter id quod dicit: *Sicut habet pater vitam in semetipso sic dedit et filio vitam habere in semetipso*.<sup>7</sup> Item, *quicumque ille facit hec et filius similiter facit*.<sup>8</sup> Quod autem similitudo et equalitas in Deo idem sint, praemissa Hylarii dicta confirmant ubi secundum essentiam et virtutem et gloriam patri filius et similis et equalis ostenditur, quibus omnibus in essentia divina singularitatis nomen repudiatur, dum secundum essentiam patri filius, ut dictum est, equalis ostenditur, quod nec esset nec esse posset, si essentia duorum singularis existeret. Proinde quod in dictis Ysidori,<sup>9</sup> essentia Dei singularis dicitur, singularitatem pro simplicitate positam intelligamus, ne magnis conciliis et catholicis patribus nomen singularitatis a divina usya sequestrantibus iniuriam faciamus et filium patri substantialiter equalem degenare videamur. Nam quod secundum substantiam patri filius sit equalis, cum praemissa Hylarii dicta evidenter ostendant, id ipsum quoque beati Augustini dicta comprobant. Qui in libro *De Trinitate* dicit inter cetera: *Non secundum hoc, quod ad patrem dicitur, equalis est patri filius. Restat ergo ut secundum id equalis sit quod ad se dicitur. Quicquid autem ad se dicitur secundum substantiam dicitur. Restat ergo ut secundum substantiam sit equalis.* Item Hylarius in epistola de synodis ait:<sup>10</sup> *Non fallit, fratres karissimi, quosdam esse qui similitudinem confitentes negant equalitatem* (62). *Si loquantur ut volunt, et blasphemie sue virus ingerant ignorantibus. Si inter similitudinem et equalitatem differre dicunt, quero, unde comparetur equalitas? Nam quia secundum essentiam et virtutem et gloriam patri filius similis est, interrogo, ex quo non videatur equalis? Nam etiam hec in superiori fide consti-*

<sup>1</sup> MIGNE, *Pat. Lat.*, Vol. X, cols. 529 f., par. 74-76.

<sup>2</sup> Epiphanius, died 403. For his writings, cf. MIGNE, *Pat. Graeca*, Vols. XLI-XLIII.

<sup>3</sup> Technical terms, the catchwords of the Arian and trinitarian parties.

<sup>4</sup> The Council of Rimini, anno 359.

<sup>5</sup> Arius, d., 336.

<sup>6</sup> John 10:30.

<sup>7</sup> John 5:26.

<sup>8</sup> John 5:19.

<sup>9</sup> Isidorus, *De Summo Bono*, Bk., I.

<sup>10</sup> Cf. MIGNE, *Pat. Lat.*, Vol. X, Cols. 528 f.



tuta dampnatio est, ut anathema esset, qui patrem et filium dissimilis sibi essentie diceret. Si ergo naturam neque aliam, neque dissimilem ei, quem impassibiliter generabat, dedit, nec potest aliam dedisse nisi propriam. Ita similitudo proprietas est, proprietas equalitas est. Et equalitas nichil differt. Que autem nichil differunt, unum sunt, non unione persone, sed equalitate substantie — Ita similitudo res ipsas naturales coequat, per similitudinem non differentis essentie. Omnis itaque filius, secundum naturalem nativitatem, equalitas patris est, quia est et similitudo nature. Et beatus Iohannes docet in natura patris et filii, quam Moyses in Seth, filio Adam ad consimilitudinem dicit, hanc equalitatem eandem esse nature. Ait enim: Propter hoc eum magis querebant Iudei interficere<sup>1</sup> quoniam non solum solvebat sabbatum sed et patrem suum dicebat Deum, equalem se faciens Deo. Et post pauca: Per Moysen Seth Ade similitudo accepta per Iohannem filius patris equalitas est per hec pie potest quod unum sint praedicari.

XV. QUOD FIDES EQUALITATIS ET SIMILITUDINIS ET UNITATIS IN DEO PLURIMUM CONTRA PLURES HERETICOS VALET

In his igitur, que dicta sunt, similitudo, equalitas, et unitas naturalis inter patrem et filium, que nichilominus attinet ad spiritum sancta commendata, plurimum contra plures hereticos operatur. Nam similitudo facit contra Noetum<sup>2</sup> et eius discipulum Sabellium. Itemque, contra Praxeam<sup>3</sup> et Hermogenem<sup>4</sup> et Priscillianum,<sup>5</sup> qui unum eundemque (63) putant esse patrem et filium et spiritum sanctum. Quod si verum esset nulla inter eos esset similitudo. Quia ut de duobus tantum loquamur, patre videlicet ac filio, subintellecto eodem sensu de spiritu sancto, nec pater filio nec filius patri similis recte aut vere diceretur, si idem pater, qui filius, aut idem filius qui pater esset, cum similitudo non possit esse unius ad semetipsum.<sup>6</sup> Item, duorum equalitas eosdem confutat hereticos, quia, dum alter alteri asseritur equalis, opinio singularitatis excluditur, quam docent praedicti heretici, simulque inequalitatis, quam docent Arriani, et dissimilitudinis, quam docent Ethius<sup>7</sup> et eius discipulus Eunomius.<sup>8</sup> Porro unitas, qua unum sunt pater et filius, non solum confutat antiquos Arrianos inducentes duos Deos diversos, alterum increatum, alterum creatum, sed et novos Iudeos eidem unitati contradicentes. Cum enim Christus dixisset, *Ego et pater unum sumus*, intellexerunt Iudei quod non intellexerunt Arriani, quodque nondum intelligunt Iudeorum suppres, novi heretici. Hoc enim dicendo Christus ostendit se unius essentie cum patre, quod Greci omousyon, Latini consubstantialem dicunt. Notandum vero quod cum hic sensus de divinitate verbi offenderit Arrianos non inde offenderat Iudeos, quippe (64) de genitura verbi nullam fidem habentes. Arriani quippe negant Christum in divinitate sua unum esse cum patre, unius videlicet substantie, vel essentie, quod utique a Iudeis sicut non est creditum ita non invenimus denegatum, ubi Christus se testatus est esse unum cum patre, neque adhuc denegant eorum semipedissequi, equanimiter cum catholica ecclesia hoc recipientes, quod Christus, in divinitate sua similis et equalis patri, unum est cum eo.

XVI. DISTINCTIO INTER IUDEOS ET ARRIANOS

Quid est ergo quod vel tunc offendit Iudeos vel nunc eorum sequaces? Audi ex eorum verbis. *De bono, inquit, opere non lapidamus te sed de blasphemia, et quia tu homo cum sis facis te ipsum Deum.*<sup>9</sup> Igitur in hoc erat Iudeis praecipue offendiculum, quod intellexerant

<sup>1</sup> John 11:53.

<sup>2</sup> Noetus, flor. between 150-240, taught monarchianism. He was opposed by Hippolytus.

<sup>3</sup> Cf. Tertullian, *Adversus Praxeam*.

<sup>4</sup> Hermogenes, flor. 200 A. D., a Christian with Gnostic tendencies. Cf. Tertullian, *Adversus Hermogenem*.

<sup>5</sup> Priscillianus held heretical views on the trinity. He was executed as a heretic in Trier, 385, perhaps the first Christian to suffer the death penalty for heresy.

<sup>6</sup> Cf. Hil., *Epis. de Synod*; MIGNE, *Pat. Lat.*, Vol. X.

<sup>7</sup> Aetius, a bishop in Coelesyria, a teacher of Arianism went to Alexandria where he labored to spread his doctrines.

<sup>8</sup> Eunomius went to Alexandria c. 356-7, where he heard Aetius, whose teachings he adopted. He died probably soon after 392.

<sup>9</sup> John 10:33.

homini attribui honorem divinum. Similiter eorum sequacibus, novis doctoribus, omnino videtur absonum, quod nos homini assumpto in Deum, Dei filium, attribuimus honorem divinum confitentes eum esse ipsum Deum, utpote naturalem non adoptivum Dei filium. Quod cum et ipse confessus esset in concilio malignantium Iudeorum, *filium*, scilicet, *hominis venturum in nubibus*<sup>1</sup> *celi cum potestate magna* et se, ut interrogatus fuerat, esse Christum, filium Dei benedicti; offensus hac ipsa confessione summus sacerdos: *Ecce, ait, audistis blasphemiam. Quid vobis videtur?*<sup>2</sup> (65) Et illi acclamantes: *Blasphemavit*, inquit, *quid adhuc desideramus testimonium?*<sup>3</sup> Item, ad Pilatum: *Nos*, inquit, *Legem habemus et secundum legem nostram debet mori, quia filium Dei se fecit.*<sup>4</sup> Hec et similia dicentes Iudei ostenderunt se praecipue offensos in eo quod Christus, cum homo esset, fecit se ipsum Deum, probans hoc ipsum testimonii operum divinorum. *Si*, inquit, *mihi non creditis, operibus credite.*<sup>5</sup> Item, cum se filium hominis ostendens dominum etiam sabbati, et potenter solveret sabbatum dixissetque: *Pater meus usquemodo operatur et ego operor,*<sup>6</sup> subnectit evangelista: *Propterea ergo magis querebant eum Iudei interficere quia non solum solvebat sabbatum sed et patrem suum dicebat Deum, equalem se faciens Deo.*<sup>7</sup> Patrem suum dicebat Deum, quod nulli angelorum vel hominum praeter ipsum est concessum, ut videlicet patrem suum dicat Deum. Et nos quidem praeceptis salutaribus moniti et divina institutione formati audemus dicere Deo; *Pater noster qui es in celis,*<sup>8</sup> pro nomine plurali dicendo "noster," quia *multi* sumus per adoptionem filii *vocati, licet, pauci electi.*<sup>9</sup> Solus vero filius hominis per operationem divini amoris, qui spiritus sanctus est, conceptus in virgine, veraciter potest Deum, patrem verbi sibi uniti, suum quoque patrem appellare, dicens "*pater meus*" vel (66) "*mi pater*" singulariter, non quod sit gemina filiationis verbi assumptis et hominis assumpti, sed quod in filioli-tatem verbi eternaliter geniti sit homo assumptus, qui praedestinatus est filius Dei in virtute secundum spiritum sanctificationis, quo, ut diximus, operante, conceptus et natus est, angelo praetestante. *Quod enim, ait, in ea natum est de spiritu sancto est.*<sup>10</sup> Cum igitur iste homo dicit: *Ego et pater unum sumus*, equalem se faciens Deo, *non rapinam arbitratus esse se equalem Deo patri, qui dedit ei esse in forma Dei,*<sup>11</sup> sed confitetur gratiam sibi prae consortibus datam, *sapientibus et prudentibus absconditam,*<sup>12</sup> ut videlicet cum sit homo secundum humanitatis conditionem minor patre, ut catholica fides habet, tamen secundum virtutem et gloriam eidem sue humanitati collatam sit non inferior aut minor Deo patre, quod Iudei et Iudeorum suppares nolunt recipere, arbitantes blasphemiam esse creaturam creatori aliquomodo coequare. Quod et re vera magna est blasphemiam nisi cum agitur de illa creatura, cuius magnitudo est ipsa divinitas immensa non ad mensuram illi data, *in quo habitat omnis plenitudo divinitatis corporaliter.*<sup>13</sup> Cum enim ut Leo Papa dicit incorporea sit divinitas quomodo corporaliter (67) inhabitat nisi quia caro nostri generis facto est caro deitatis? Igitur incarnata in una persona ipsa divinitas contulit homini esse Deum, Deo patri equalem, quod ei conferre non potuisset persona, quae Deus non esset, vel proprietates personae quae, item Deus non esset, si forinsecus affixa esset deitati vel personis eius. Pereat igitur hec nova doctrina negans divinitatem incarnatam et naturae humane sensibus vestitam nostraeque mortalitatis pelle calciatam. Pereant etiam proprietates illae vel personae quae divina substantia non sunt et in cordibus impiorum non Deum simplicem, sed simulacrum talibus proprietatibus compositum representant mentesque ipsorum a Deo vero ac simplici alienant. Audiamus nos potius antiqua patrum testimonia non proprietatem filiationem inanem sed ipsam filii Dei personam substantivam incarnatam atque in ea carnem nostrae naturae deificatam, glorificatam, clarificatam et super omnes creaturas (68) in immensum exaltatam contestantia. Testimonium itaque Christi dicentis, *Ego et pater unum sumus,*<sup>14</sup> diverso sensu et Arrianos et Iudeos offendit.

<sup>1</sup> Luke 21:27.<sup>2</sup> Matt. 27:65; Mark 14:64.<sup>3</sup> Matt. 26:65.<sup>5</sup> John 10:38.<sup>4</sup> John 19:7.<sup>6</sup> John 8:17.<sup>7</sup> John 5:18.<sup>9</sup> Matt. 20:16, 22:14.<sup>11</sup> Phil. 2:6.<sup>13</sup> Col. 2:9.<sup>8</sup> Matt. 6:9.<sup>10</sup> Matt. 1:18.<sup>12</sup> Matt. 11:25.<sup>14</sup> John 10:30.

Arriani quippe inde sunt offensi quia verbo quod erat in principio denegabant esse unum cum patre. Iudei vero inde quia homini apud se contemptibili graviter indignabantur, quod, homo cum esset, *patrem suum dicebat Deum, equalem se faciens Deo*,<sup>1</sup> quod in eo intellexerant ubi dixerat, *Ego et pater unum sumus*. Et Arriani quidem iam confutati conticuerunt. Iudei vero et Iudaizantes heretici adhuc indignantur hominem assumptum in Deum, Dei filium, credi cum patre sic esse unum ut assumpto nichil divinum, et assumpti nichil desit humaum, sicut affirmat Leo Papa. Interponamus adhuc plura patrum testimonia id ipsum contestantia non (69) accidentalibus connexionibus ut illi, qui dicunt sicut coloratus intelligens dicitur propter persone unitatem, que corpore colorata mente intelligit. Sic in Christo divina homini et humana Deo attribuuntur propter persone unitatem, ut homo est Deus omnipotens et Deus ac Dominus glorie crucifixus est. Non, inquam, sic intendimus assignare vel homini divina, vel Deo humana sola personali unitate, quomodo coloratus dicitur intelligens, verum longe altius, natura inferiore in Christo, salva sui essentia, in superioris nature omnimodam virtutem et gloriam provecta, quod est eam ad dexteram patris exaltatam esse. Non enim divinitas humanitati sic est incapabilis, ut color menti, vel intelligentia (70) corpori, sed omnino pura in Christo humanitas, *tamquam nubes candida*,<sup>2</sup> capax divini luminis et illud ei capabile fuit. Propter quod *pluvia* totius divinitatis *in vellus purissime*<sup>3</sup> humanitatis descendens denuo prelo crucis expressa in concham totius mundi sparsit et spargit gracias divisivas, non imminuta vel imminuenda umquam plenitudine semel infusa homini assumpto, cuius, ut ait Iohannes, *vidimus gloriam non quasi adoptivi sed quasi unigeniti a patre pleni gracia et veritate*.<sup>4</sup> Paulus quoque asserit *omnem plenitudinem divinitatis corporaliter inhabitare in Christo*<sup>5</sup> et ipsum Christum esse *Dei virtutem et Dei sapientiam*,<sup>6</sup> Christi nomine significans humanam et unctam naturam *prae suis consortibus unctam*,<sup>7</sup> et non solum filium Dei persone unitam, (71) sed etiam ipsius filii Dei divinitati coadunatam. Unde Augustinus de verbis Domini: Adveniens divinitas in utero virginis Marie auctoritate illa, qua, in Paradiso Adam de limo formavit, carnem sibi ex substantia ipsius Marie fabricavit, quam pro salute nostra suscipiens et sibi coadunans natus est Deus et homo. Ecce in his dictis habemus de duarum naturarum coadunatione qualis non potest esse coloris ad mentem vel intelligentie ad corpus, quamquam in una persona sit et corpus coloratum et mens intelligens. Audiamus in Christo, natura inferior, licet permanente sue conditionis essentia, quousque in superioris nature gloria sit magnificata, glorificata et exaltata. Iam dictus Augustinus item de verbis Domini exponens illud *Si diligeretis me gauderetis*<sup>8</sup> utique dicit inter cetera: *Nature humane gratulandum est, eo quod sit assumpta a verbo unigenito ut immortalis constitueretur in celo atque ita fieret terra sublimis ut incorruptibilis pulvis sederet ad dexteram patris. Hoc enim modo se iturum ad patrem dixit. Item Leo Papa in sermone ad populum*:<sup>9</sup> *Et re vera magna et ineffabilis erat causa gaudendi cum in conspectu sancte multitudinis super omnium creaturarum* (72) *celestium dignitatem humani generis naturam conscenderit, supergressura angelicos ordines, et ultra archangelorum altitudines elevanda, nec ullis sublimitatibus modum sue provectionis habitura, nisi eterni patris recepta consessu illius glorie sociaretur in throno, cuius, nature copulabatur in filio. Item Augustinus in Libro Retractionum*<sup>10</sup> *dicit: Exposui epistolam apostoli ad Galathas non carptim, id est, aliqua praetermittens, sed continuanter et totam. Hanc expositionem uno volumine comprehendi. In quo illud quod dictum est priores ergo apostoli veraces, qui non ab hominibus, sed a Deo per hominem missi sunt per Iesum Christum, scilicet adhuc mortalem. Verax etiam novissimus apostolus, qui per Iesum Christum, totum iam Deum, post resurrectionem eius missus est, propter immortalitatem, dictum est totum iam Deum, quam post resurrectionem habere cepit, non propter divinitatem semper immortalem, a*

<sup>1</sup> John 19:7.<sup>2</sup> Rev. 14:14.<sup>7</sup> Ps. 44:8.<sup>8</sup> John 14:28.<sup>3</sup> Ps. 71:6.<sup>4</sup> John 1:14.<sup>9</sup> Leo I., *Sermo I, de Ascensione Domini*, cap. IV.<sup>5</sup> Col. 2:9.<sup>6</sup> 1 Cor. 1:24.<sup>10</sup> S. Augustini, *Retractionum*, Liber I, cap. 24.



qua numquam recessit, in qua totus Deus erat, et cum moriturus adhuc erat. Hunc autem sensum sequentia manifestant. Adiunxi enim dicens priores sunt certi apostoli per Christum adhuc ex parte hominem, id est, mortalem. Novissimus est autem apostolus Paulus per Christum iam totum Deum, id est, omni ex parte immortalem. Hoc enim dixi exponens quod ait, non ab hominibus neque per hominem sed per Iesum Christum et Deum patrem,<sup>1</sup> quasi Christus iam non sit homo. Sequitur enim, qui suscitavit illum a mortuis,<sup>2</sup> ut hinc appareret cur dixerit, neque per hominem, proinde propter immortalitatem iam nunc non homo Christus Deus propter substantiam, vero nature humane cum (73) qua ascendit in celum, et nunc mediator Dei et hominum, homo Christus Iesus,<sup>3</sup> quoniam sic veniet quomodo viderunt eum, qui viderunt eum in celum.<sup>4</sup> Idem, in epistola ad Philippenses: Homini donatum est nomen quod est super omne nomen,<sup>5</sup> non Deo, ut cum forma servi,<sup>6</sup> nominetur unigenitus filius Dei. Quisquis hec dicta beati Augustini fideliter legendo perspexerit sane intelligere poterit quia tantus doctor numquam sensit quod isti sentiunt, qui volunt vocari ab hominibus Rabbi<sup>7</sup> et magistrali, ut dicitur, auctoritate astruunt hominis in Deum assumpti solam personam, non etiam naturam divinitatis habere virtutem et gloriam quasi non magis divinitatis possit esse humani spiritus et corporis quam color mentis vel intelligentia corporis. Quod si sensisset ille beatus non affirmasset pulverem sedere ad dexteram patris,<sup>8</sup> cum pulvis nomen sit inferioris portionis in humana substantia. Item, cum dicit propter immortalitatem Christum iam totum Deum, claret humanam in Christo naturam talem accepisse immortalitatem per quam deificata sit plene in Deum, sicut verbum ab eterno Deus fuit, verificata sententia, que Iudeos offendit, quando ipse Christus, cum homo esset, adhuc (74) mortalis, tamen sibi conscius immortalitatis divine, quam ipsius divinitas ab eterno habuit, queque humanitati eius iam tunc in proximo cum hec loqueretur conferenda fuit, equalem se hominem faciens Deo, dixit, *Ego et pater unum sumus.*<sup>9</sup> Absit ut immortalitatem solummodo, qualem habent angeli sancti vel habituri sunt homines beati, arbitremur homini assumpto, qui filius Dei est, collatam, sed potius que soli Deo assignatur assertionem apostolicam, ubi dicitur, *qui solus habet immortalitatem*,<sup>10</sup> quam intelligendam asserit beatus Gregorius divine substantie immutabilitatem, quoniam omne quod mutatur ab eo statu, in quo prius erat, moritur. Deus autem, quia nullatenus mutatur, nullatenus moritur. Qua immutabilitate sive immortalitate homo assumptus recte intelligitur, vel si non potest intelligi, sane creditur in throno paterne glorie honorificatus, ubi sedet homo quiescens, regnans, iudicans, eque ut Deus pater eius. Unde non sub patre sed iuxta eum et ad dexteram eius habet sessionem, non localiter, ut uniformii putant. sed divinitus requiem et iudicandi ac dominandi habens potestatem, que recte sedes eius intelligitur.

#### XVII. QUALITER FILIUS PATRIS SUBICIENDUS INTELLIGATUR

Neque vero te moveat quod, (75) cum omnia subicerit illi Deus, ipse quoque ab apostolo affirmatur Deo subiciendus.<sup>11</sup> Lege Ambrosium in Libro ad Gracianum<sup>12</sup> de hac subiectione futura pie disputantem et opiniones tuas de subiectione iniuriosa fortiter exsufflantem. Dicit enim inter cetera:

Apostolicum recenseamus capitulum. "Novissime, inquit, inimica destruetur mors omnia sub pedibus eius. Cum autem dicat, omnia subiecta sunt, ei sine dubio praetur eum, qui sibi subiecit omnia." "Videmus igitur quia nondum subiectum sed subiciendum esse scriptura commemorat." "Sicut enim si in me concupiscat caro adversus spiritum et spiritus adversus carnem, non videor esse subiectus.<sup>13</sup> Ita quia omnis ecclesia unum corpus est Christi, quamdiu dissentit humanum genus Christum dividimus. Non ergo subiectus est Christus, cuius adhuc membra non sunt subiecta. Cum autem fuerimus non multa membra, sed unus spiritus, tunc et ipse subiectus erit ut per ipsius subiec-

<sup>1</sup> Gal. 1:1. <sup>2</sup> Rom. 4:24. <sup>3</sup> 1 Tim. 2:5. <sup>4</sup> Acts 1:11.

<sup>5</sup> Phil. 2:9.

<sup>6</sup> Phil. 2:7.

<sup>7</sup> Matt. 23:7.

<sup>9</sup> John 10:30.

<sup>10</sup> 1 Tim. 6:16.

<sup>11</sup> 1 Cor. 15:27 ff.

<sup>8</sup> Col. 3:1; Heb. 10:12; 1 Peter 3:22; Matt. 26:64; Mark 16:19.

<sup>12</sup> Gerhoh here quotes detached sentences from St. Ambrose, *De Fide*, Book V, par. 160, 161, 164, and 169.

<sup>13</sup> Gal. 5:17.

tionem sit Deus omnia in omnibus." Item post pauca:<sup>1</sup> "Sicut in illo per carnem illam, que est pignus nostre salutis, sedere nos in celestibus<sup>2</sup> apostolus dixit, utique non sedentes, sic et ille per nostre assumptionem nature dicitur subiectus in nobis." (76) Item, Scriptum est quia, cum mortui essemus peccatis, convivificavit nos in Christo, cuius gratia estis salvifaci, et simul suscitavit simulque fecit sedere in celestibus in Christo Iesu.<sup>3</sup> Agnosco scriptum, sed non ut homines sedere ad dexteram sibi patriatur Deus, sed ut in Christo sedere, quia ipse est omnium fundamentum, et ipse est caput ecclesie,<sup>4</sup> in quo communis secundum carnem natura praeerogativam sedis celestis emeruit. In Christo enim Deo caro in carne autem humani generis natura omnium hominum particeps honoratur. Sicut ergo nos in illo sedemus per corporee communionem nature, ita et ille, qui per susceptionem nostre carnis maledictum pro nobis factus est,<sup>5</sup> cum maledictum utique in benedictum filium Dei non cadat, ita, inquam, et ille per obedientiam omnium erit subiectus in nobis; cum gentilis crediderit, cum Iudeus agnoverit quem crucifixit, cum Manicheus adoraverit quem in carne venisse non credidit, cum Arrianus omnipotentem confessus fuerit quem negavit, cum postremo in omnibus fuerit sapientia Dei, iusticia, pax, caritas, resurrectio.<sup>6</sup> Per sua igitur opera Christus et genera diversa (77) virtutum erit in nobis patri subditus, cum, viciis abdicatis et feriente delicto, unus in omnibus Deo ceperit uno sensu populorum omnium spiritus adherere, tunc erit Deus omnia in omnibus. Conclusionem igitur totius absolutionis breviter colligamus. Unitas potestatis opinionem iniuriose subiectionis excludit. Evacuatio potestatum et victoria de morte quesita triumphatoris utique non minuit potestatem. Subiectionem operatur obedientia, obedientiam Christus assumpsit, obedientia usque ad crucem,<sup>7</sup> crux ad salutem. Ergo ubi opus, ibi et auctor operis. Cum igitur omnia Christo subiecta fuerint per obedientiam Christi, ut in nomine eius omne genu flectatur.<sup>8</sup> Nunc enim quia non omnes credunt non videntur omnes esse subiecti. Cum ergo crediderint omnes et Dei fecerint voluntatem, erit omnia et in omnibus Christus. Cum Christus fuerit omnia et in omnibus erit omnia et in omnibus Deus; quia pater manet in filio." Hec est pie subiectionis interpretatio. Item alibi: "Quod si queris quemadmodum sit subiectus in nobis, ipse ostendit dicens: In carcere eram et venistis ad me. Infirmus eram et visitastis me. Quod uni ex minimis meis fecistis, mihi fecistis."<sup>9</sup> In eo infirmus, (78) in quo subiectus. Item, lege Hilarium de hac subiectione mirifice<sup>10</sup> disserentem et gloriosam potius quam inuriosam illam esse demonstrantem. Dicit enim inter cetera, libro XI:<sup>11</sup> "Subiectis omnibus ei, praeter eum qui subiecit ei omnia. Tunc subicietur ipse subicienti sibi omnia. Subiectionis vero causa non alia quam ut sit Deus omnia in omnibus. Finis itaque est, esse Deum omnia in omnibus. Et querendum nunc ante omnia est, an finis defectio sit, an traditio, qua dat regnum patri, amissio sit an subiectio infirmitas sit." Et post pauca:<sup>12</sup> "Que autem subiectionis illius proprietates sit idem apostolus testatus est, cum ait: Qui transfigurabit corpus humilitatis nostre conforme corpori glorie sue, secundum efficacie sue opera, qua possit sibi subicere omnia.<sup>13</sup> Subiectio itaque etiam ea est, que est ex natura in naturam concessio, dum a se secundum quod est desinens, ei subicitur, cuius concedit in formam. Desinit autem, non ut non sit, sed ut proficiat. Fiat ex diminutione subitus, in speciem subcepti alteris generis transeundo. Denique ut sacramenti huius esset, ratio absoluta, post novissime devictam mortem, dum ait: Cum autem dixerit omnia (79) subiecta absque eo, qui subiecit ei omnia, tunc et ipse filius subiectus erit illi qui ei subiecit omnia ut sit Deus omnia in omnibus. Primus igitur sacramenti gradus est, subiecta esse ei omnia, et tunc ipsum subiectum fieri subicienti sibi omnia, ut quemadmodum nos glorie regnantis corporis sui subdimur eodem rursum sacramento ipse regnans in gloria corporis subicienti sibi universa subdatur." Et post pauca:<sup>14</sup> "Regnat autem in hoc eodem glorioso iam suo corpore donec evacuatis magistratibus et morte devicta subiciat sibi inimicos. Et quidem ab apostolo servatus hic modus est ut magistratibus et potestatibus evacuatio,<sup>15</sup> inimicis vero, subiectio deputaretur. Quibus subiectis subicietur subicienti sibi omnia in omnibus Deo scilicet ut sit Deus omnia in omnibus nature assumpti corporis nostri natura paterne divinitatis invecta. Per

<sup>1</sup> Ambrosius, *De Fide*, Book V, par. 179.

<sup>2</sup> Eph. 2:6.

<sup>3</sup> St. Ambrose, *De Fide*, Book V, par. 181-3.

<sup>4</sup> Eph. 2:5.

<sup>5</sup> Eph. 5:23.

<sup>6</sup> Gal. 3:13.

<sup>7</sup> Phil. 2:8.

<sup>8</sup> Phil. 2:10.

<sup>9</sup> Matt. 25:36 ff.; St. Ambrose, *De Fide*, Book V, par. 178.

<sup>10</sup> MS. miffice.

<sup>11</sup> Hilarius, Book XI, par. 26-7. MIGNE, *Pat. Lat.*, Vol. X, col. 417.

<sup>12</sup> Hilarius, Book XI, par. 35. MIGNE, *Pat. Lat.*, Vol. X, col. 422.

<sup>13</sup> Phil. 3:21.

<sup>14</sup> Hilarius, Book XI, par. 40; MIGNE, *Pat. Lat.*, Vol. X, col. 425.

<sup>15</sup> MS. Evacuatio.

hoc enim erit omnia in omnibus Deus quia secundum dispensationem ex Deo et homine, hominum Deique mediator, habens in se ex dispensatione quod carnis est adepturus in omnibus ex subiectione quod Deiest ne ex parte Deus sit sed Deus totus. Non alia itaque subiectionis causa est quam ut omnia in omnibus Deus sit, nulla ex parte terreni (80) in eo corporis residente natura, ut ante in se duo continens nunc Deus tantum sit, non abiecto corpore sed ex subiectione translato neque per defec-tionem abolito, sed ex clarificatione mutato acquires sibi Deo potius hominem quam Deum per hominem amittens, ut sit Deus omnia in omnibus per quod non divinitatis infirmitas est sed assump-tionis proventus dum homo et Deus iam Deus totum est.

## XVII. HYLARIUS CONTRA SENSUM IUDAICUM

Contra sensum quoque Iudaice impietatis idem libro VIII loquitur.<sup>1</sup> *Tulerunt igitur lapides Iudei ut lapidarent eum. Respondens multa bona opera ostendi vobis a patre. Propter quod eorum opus lapidatis me? Responderunt ei Iudei, pro bono opere non lapidamus te sed pro blasphemia et quia tu cum sis homo facis te Deum.*<sup>2</sup> “Attu vero heretice quid agas ac profitearis agnosce. Et eorum te intellige esse consortem, quorum mente refert perfidie exem-plum. Ad id enim quod dictum est [*Ego*]<sup>3</sup> *et pater unum sumus*, Iudei lapides elevaverunt et eorum impius dolor [ad sacramentum fidei a salutaris inpatiens usque ad impetum inferende mortis] erupit. Quid tu? Non habendo quem lapides negandæ minus efficis? Non differt (81) voluntas sed voluntatem tuam inefficacem celestis tronus effecit. Quantum irreligiosior Iudeo! Lapidem ille in corpus elevat, tu in spiritum. Ille in hominem, ut putabat, tu in Deum. Ille in diversantem in terris, tu in sedentem in trono virtutis. Ille in ignoratum, tu in confes-sum. Ille in moriturum, tu in iudicem seculorum. Ille dicit: *Tu cum sis homo, tu dicis, cum sis creatura. Uterque dicitis: Facis te Deum. Hoc commune in eum impii vestri oris obpro-prium est. Negas enim Deum ex generatione Dei. Negas filium ex nativitatis veritate. Negas, Ego et pater unum sumus, confessionem unius in utroque atque consimilis esse nature. Subicis substantie nove et externe et aliene Deum ut aut alterius generis Deus sit, aut omnino nec Deus sit, quia non ex Dei nativitate subsistat, sed quia ad sacramentum dicti huius commotus es, Ego et pater unum sumus, et Iudeo dicente: Tu, cum sis homo, facis te Deum, tu pari impietate dicis: Cum sis creatura facis te Deum. Dicis enim: Non es filius ex nativitate, non es Deus ex veritate. Creatura es præstantior cunctis, sed non es in Deum natus, ex incorporali Deo nativitatem non admitto (82) nature. Non modo tu et pater non unum estis, sed nec filius es, nec similis es, nec Deus es. Iudeis quidem Dominus respondit, sed magis ad impietatem tuam omnis hec apta responsio est: Nonne scriptum est in lege quoniam ego dixi Dii estis?<sup>4</sup> Si ergo dixit illos Deos, ad quos verbum factum est Dei, et non potest solvi scriptura, quem pater sanctificavit et misit in hunc mundum vos dicitis quia blasphemavi quoniam dixi filius Dei sum. Si non facio opera patris mei, nolite mihi credere. Si autem facio et si mihi non vultis credere, operibus credite ut sciatis et cognoscatis quoniam pater in me est et ego in eo.<sup>5</sup> Cau-sam responsionis causa obiecte ei blasphemie intulit. Id enim ad crimen deputabatur quod se, cum homo esset, Deum faceret. Deum autem se facere per id arguebatur quod dixisset: Ego et pater unum sumus. Demonstraturus itaque hoc, quod ipse et pater unum essent, ex nativi-tatis usurpatum esse natura, in eo primum ineptiam ridiculi obprobrii computat, cur in reatum vocaretur quod se, cum homo esset, Deum faceret. Cum enim lex huius nominis appellationem (83) sanctis hominibus decerneret et sermo Dei indissolubilis confirmaret hanc inpertiri in homi-nes professionem, quomodo hic quem pater sanctificasset et in hunc mundum misisset blasphe-mus esset se Dei filium confitendo, cum cognominatos Deos per legem Deos indissolubilis Dei sermo statuisset? Iam ergo non est criminis quod se Deum, cum homo sit, faciat, cum eos, qui homines sint, lex Deos dixerit. Et a certis hominibus non irreligiosa huius nominis est usurpa-tio. Est ab eo homine quem sanctificavit pater? Omnis enim hic de homine responsio est, quia Dei filius etiam hominis filius est. Idem, in undecimo: Id enim homini acquirebatur ut Deus*

<sup>1</sup> Cf. HILARIUS, Book VIII, par. 43.<sup>2</sup> John 10:32.<sup>3</sup> MS. omits.<sup>4</sup> Ps. 81:6.<sup>5</sup> John 10:38.



esset, sed manere in Dei unitate assumptus nullomodo poterat nisi per unitatem Dei in unitatem Dei naturalis evaderet ut per hoc, quod in natura erat Deus verbum, verbum quoque caro factum rursum in natura Dei esset, atque ita homo Iesus Christus maneret in gloria Dei patris, si in gloria verbi caro esset unita, rediretque tunc in nature paterne etiam secundum hominem unitatem, verbum caro factum cum gloriam verbi caro assumpta tenuisset. Reddenda igitur apud se ipsum patri erat unitas sua ut nativitas nature sue in se rursum glorificanda (84) resideret, quia dispensati novitas offensionem unitatis intulerat et unitas, ut perfecta fuerat, nulla esse nunc poterat nisi glorificata apud se fuisset carnis assumptio. Item, donatur Iesu ut *ei, celestia, terrestria, et inferna genu flectant et omnis lingua confiteatur*<sup>1</sup> quoniam Dominus Iesus Christus in gloria Dei patris sit confitendus. Audis itaque, *Pater maior me est*. Scito eum de quo ob meritum obedientie, dictum est, *Et donavit ei nomen quod est super omne nomen*. Audis rursum: *Ego et pater unum sumus et qui me videt videt et patrem, et ego in patre et pater in me est*.<sup>2</sup> Honorem donate confessionis intellige, quia Dominus Iesus in gloria est Dei patris. Quando igitur illud est *pater maior me est*? Nempe cum donavit ei nomen quod est super omne nomen. At contra, quando est *Ego et pater unum sumus*? Nempe cum omnis lingua confitetur quia Dominus Iesus est in gloria Dei patris. Si igitur donantis auctoritate pater maior me est numquid per doni confessionem minor filius est? Maior utique donans est, sed minor iam non est cui unum esse donatur. Si non hoc donatur Iesu ut confitendus sit in gloria Dei patris minor patre. Si autem in ea gloria donatur ei esse, (85) qua pater est, habes et in donantis auctoritate, quia maior est, et in donati confessione quia unum sit. Maior itaque pater est filio et plane maior, cui tantum donat esse quantus ipse est in nascibilitatis imaginem, sacramento nativitatis impertit ei, quem ex se in forma sua generat, quem rursum de forma servi in formam Dei renovat, quem in gloria sua secundum spiritum Christum Deum natum donat rursum esse in gloria sua secundum carnem Iesum Christum Deum natum. Idem, in epistola de synodis: *Conservatur dignitas divinitatis ut in eo quod verbum caro factum est, dum verbum caro sit, non amiserit per carnem quod erat verbum neque translatum in carnem sit, ut verbum esse desineret, sed verbum caro factum est, ut potius caro hoc inciperet esse quod verbum*. Alioquin unde carni in operibus virtutes, in monte gloriam, in cognitionibus humanorum cordium scientiam, in passione securitatem, in morte vitam?

## XIX. DE SCALA IACOB

Hec et similia patrum catholicorum sensa congerendo videor mihi videre angelos descendentes et ascendentes super filium hominis in scala que demonstrata est Iacob dormienti.<sup>3</sup> Annon ascendunt cum (86) sublimia de gloria Christi praedicant ut est illud, *ego et pater unum sumus*, quod tam de humane quam divine substantie in Christo gloria verbis Hylarii supra exposuimus? Item, cum attenditur Christus ante passionem dixisse: *Si diligeretis me gauderetis utique quia ad patrem vado*,<sup>4</sup> quia pater maior me est, angeli hec praedicantes descendunt, post passionem vero cum dicit Christus, *Data est mihi omnis potestas in celo et in terra*,<sup>5</sup> que vox est hominis assumpti, cui data est omnis potestas verbi sibi uniti, ascensiones in corde ista meditantes disponunt. Descendit Athanasius cum dixit "*minor patre secundum humanitatem*," ascendit cum dixit "*sedet ad dexteram Dei patris omnipotentis*." Que utraque sunt de natura humana, cuius in priore sententia per nomen humanitatis exprimitur nuda conditio, que non est maior in Christo quam in Petro, nec maior in Petro salvato quam in Iuda perduto, in secunda vero eiusdem humanitatis exaltatio et glorificatio, descendente videlicet atque ascendente hoc angelo super filium hominis, qui et minor est patre secundum pure humanitatis conditionem et equalis, (87) immo unum cum ipso secundum eiusdem sue humanitatis in divine potestatis altera evectionem.

Sic enim premissa patrum verba testantur homini assumpto datum est esse in gloria

<sup>1</sup> Rom. 14:11.<sup>2</sup> John 10:30.<sup>3</sup> Gen. 28:12.<sup>4</sup> John 14:23.<sup>5</sup> Matt. 28:18.

patris ita, ut hoc omnis lingua confiteatur, quamquam Iudei et iudaizantes heretici valenter literati hoc negare audeant, quorum quidam dictis et scriptis hoc docent, quod Christus in natura humana Dei filius non sit nisi per adoptionem, cum longe ante nos hic error sit condempnatus in Bonoso<sup>1</sup> heretico et meo quoque tempore, cum essem Rome,<sup>2</sup> ab Honorio<sup>3</sup> papa fuerit exsufflata hec perversa doctrina porrecto ei libello a quodam canonico Lateranensi hoc rationabiliter asserente, quod etiam secundum hominem Christus est filius Dei naturalis, non adoptivus. Hinc ei illud privilegium quod patrem suum dicit Deum, verbi gratia, *Pater meus usquemodo operatur et ego operor*, et alibi, *ascendo ad patrem meum et patrem vestrum* se videlicet naturalem filium secernens ab adoptivis quorum nulli congruit dicere pater meus pro nomine singulari sed pater noster communiter habent omnes dicere quos et filius naturalis in fratres et pater in filios dignatur adoperare. Profecto istum sensum non quidem dilexerunt (88) sed tamen intellexerunt Iudei cum, Christo nominante Deum patrem suum, iudicaverunt eum blasphemum, quod de communi paternitate minime sensissent, quoniam et ipsi habebant hoc usitatum ut dicerent, *Unum patrem habemus, Deum*.<sup>4</sup> Si quidem ista paternitas gratie non coequat filios patri omnipotenti, ut illa singularis et naturalis, in qua dicit filius unigenitus: *Omnia mihi tradita sunt a patre meo*; item: *Pater meus quod dedit mihi maius est omnibus*. Alias autem ubi se fratribus consociat sub paternitate gratie humilia filiisque adoptivis convenientia de se loquitur ut illuc: *Sed ut cognoscat mundus quia diligo patrem et sicut mandatum dedit mihi pater sic facio*.<sup>5</sup> Non hic dicit patrem meum vel pater meus, neque communiter dicit pater noster, sed absolute pater; ut intelligas hoc nomine paternitate[m] totius divinitatis homini assumpto mandata dictantis quid faciat, quid iudicet. Unde ait: *Non possum ego a me ipso facere quicquam sed sicut audio, iudico*.<sup>6</sup> Apostolus quoque hanc paternitatem notat ubi ait: *Unus Deus et pater omnium qui super omnes et per omnia et in omnibus nobis*.<sup>7</sup> Et nos cum dicimus *pater noster qui es in celis*,<sup>8</sup> totam invocamus trinitatem nomine (89) patris, cuius gratia datur nobis ut filii Dei vocemur<sup>9</sup> et simus *qui natura eramus filii ire*,<sup>10</sup> sed is qui numquam erat filius ire, solus dignus fuit audire a patre: *Tu es filius meus dilectus in te mihi complacui*.<sup>11</sup> Item in Psalmo: *Filius meus es tu, ego hodie genui te*.<sup>12</sup> Ac si dicat: Alios mihi alienos regenerabo in filios adoptivos, te ab eterno praedestinatum filium meum in virtute genui mihi filium naturalem, qui solus invocabis me dicendo *Pater meus es tu, et ego primogenitum ponam te*.<sup>13</sup> Magna dignitas huius primogeniti, qui et in divinitate sua primogenitus est omnis creature atque in humanitate sua primogenitus mortuorum ut, sicut apostolus ait, Sit in omnibus ipse primatum, tenens tam in humanitate sua cui data est omnis potestas in celo et in terra, quam in divinitate sua cuius potestas est eterna.

XIX. DE EO QUOD DICIT FILIUS: NON POSSUM A ME IPSE FACERE QUICQUAM.

Neque vero movere debet quod dicit: *Non possum a me ipso facere quicquam, sed sicut audio iudico*;<sup>14</sup> quasi per hec dicta notetur assumpti hominis in potentia, cum nec verbum Dei Deus possit a se ipso facere quicquam, quia nec a se ipso est, sed a patre suo et est et potest, atque sine illo nichil potest; quod tamen non est in potentia (90) sed magna potentia, vel potius omnipotentia, sicut ex opposito angelum vel hominem posse aliquid a semetipso magna est infirmitas et in potentia. Quid est enim facere hominem aliquid a semetipso nisi peccare? Sicut enim cum quis loquitur mendacium, ex propriis loquitur; maxime si ita est mendax ut pater

<sup>1</sup> Bonosus, bishop of Sardica. Cf. ST. AMBROSE's *Letters to the Synod of Capua*, Anno 391; MANSI, Vol. III, pp. 683-86; MIGNE, *Pat. Lat.*, Vol. XVI, cols. 1222 ff.; HEFELE, Vol. II, 2d ed., pp. 53, 300.

<sup>2</sup> Probably 1126.

<sup>3</sup> Honorius II., 1124-30. Gerhoh went to Rome as the messenger of Conrad, archbishop of Salzburg, to beg the aid of the pope in his struggle against the secular clergy. Cf. MIGNE, Vol. CXCIV, col. 1377, also Vol. CXCLIII, col. 1377; *Libelli*, Vol. III, p. 204.

<sup>4</sup> John 8:41.

<sup>6</sup> John 5:30.

<sup>8</sup> Matt. 6:9.

<sup>10</sup> Eph. 2:3.

<sup>11</sup> Matt. 3:17; 2 Peter 1:17; Mark 1:11; Luke 3:22.

<sup>12</sup> Ps. 2:7; Acts 13:33; Heb. 1:5, 5:5.

<sup>13</sup> Ps. 88:27.

<sup>5</sup> John 14:38.

<sup>7</sup> Eph. 4:6.

<sup>9</sup> John 3:1.

<sup>14</sup> John 5:30.

quoque et inventor sit eius mendatii quod loquitur, sicut diabolus, ita etiam cum quis peccat, ex propriis et a semetipso facit quod facit. Cum ergo dicitur: Non potest filius a semetipso facere quicquam nisi quod viderit patrem facientem, vel non possum ego a me ipso facere quicquam, verba hec sonant non inpotentiam sed omnipotentiam, quod ex adiunctis intelligi potest cum dicitur: Quicumque enim ille facit hec et filius similiter facit. Quis mihi tribuat spoliari hac potentia qua possum a me ipso facere aliquid, sicut primus homo de terra terrenus a semetipso fecit quod ei serpens per mulierem suggessit? Contingat mihi hac potentia privari et perfecte incorporari homini de celo celesti, qui non potest a semetipso facere quicquam, licet habens cum patre suo eternam potentiam et virtutem invictissimam et gloriam magnam, quia quod dedit illi pater maius est omnibus. Dicta hec exponens venerabilis (91) Beda presbyter ait: *Maius autem omnibus, quod mediatori Dei et hominum Iesu Christo pater dedit, hoc est, ut sit unigenitus filius eius in ullo gignenti vel natura dissimilis vel virtute inferior, vel tempore posterior.* Quam videlicet equalitatem ipse Dominus in divinitate habuit priusquam mundus esset apud patrem, ipse in humanitate ex tempore incarnationis accepit. Maximus episcopus de natale Domini tractans, ipsam nativitatem, qua Deus natus est ex femina, divinam potius quam humanam nominandam censuit, dicens inter cetera: Secreto quodam incomprehensoque conceptu procedit de mortali femina divina progenies. Nec mirum sane si extitit divina nativitas ubi non erat humana conceptio. Idem:<sup>1</sup> *Duas in Christo generationes legimus sed in utraque incomprehenso divinitatis est virtus, ibi enim illum ex semetipso genuit Deus, hic eum virgo, Deo operante, concepit, illa nativitate hominem fecit, hac generatione hominem liberavit. Cum autem duas Christi legimus nativitates non bis asseritur Dei filius natus sed gemina in uno Dei filio confirmatur esse substantia.* Idem: *Igitur Deus qui apud Deum erat prodivit a Deo et caro Dei que in Deo non erat processit ex femina.* Item, *Verbum caro factum est non ut Deus evacuaretur (92) in hominem sed ut homo glorificaretur in Deum. Ita nobis notus est Deus sed ex duabus nativitatibus, id est, Dei et hominis, se ipsum unigenitus patris atque in sese hominem unum esse voluit Deum. Generationem eius quis enarrabit?*<sup>2</sup> Idem in eodem: *Quomodo comprehendere potest homo Deum factus ingenitum, mortalis eternum? Si investigare niteris qualiter Deus in hominem vel homo transivit in Deum, investiga prius, si potes, quomodo ex nichilo factus est mundus.* Quid contra hec dicere habent qui humanam in Christo naturam a divina virtute sic alienam fingunt ut assumpta in personam vel proprietatem persone, que Deus non sit, nomen quod est super omne nomen, habere non possit, nisi, ut dicunt, in persona? Et utinam sic ista dicerent ut personam ipsam filii Dei, cuius in unitatem assumptus est homo, concederent esse Deum et divinam substantiam.

## XX. QUOD FILII PERSONA DIVINA SUBSTANTIA SIT

Non, inquit, possumus concedere quod proprietates in Deo quibus Deus non aliquid est, sicut divinitate Deus, bonitate bonus, magnitudine magnus, vel ut ait Boetius, ipsum bonus, ipsum magnus est, sed potius ad aliquid dicitur, ut pater non ad se, sed ad filium, et filius ad patrem. Non, inquit, concedimus huiusmodi proprietates forin-(93)secus affixas inter substantialia vel inherentia computari neque in divina certe neque in humana substantia. Tibi enim existenti in Arabia si filius nascatur in Hibernia que circa te queso ob hoc accidit permutacio? Ad hec respondemus quod qui hec de dictis, ut aiunt, Boetii ac magistri Gilliberti Boetium glosantis conceperunt, hoc pariter ibidem notasse debuerunt quod auctor dicit: *In naturalibus rationabiliter, in mathematicis disciplinaliter, in divinis intellectualiter, versari oportebit, nec deduci ad imagines sed ipsam inspicere formam, que vere forma et imago est, et que ipsum esse est et ex qua esse est.* Cum ergo prohibeat auctoritas in divinis mathematice versandum, quare tu mathematica consideratione abstractim consideras vel proprietates personarum quasi extrinsecus affixas, que ipse persone non sint, ut in humanis personis promptum est

<sup>1</sup> ST. AUGUSTINE, Sermo XIII, in Natali Domini, I.<sup>2</sup> Isa. 53:8; Acts 8:33.



animadverti vel personas ipsas quasi extra substantiam, quod neque in humanis neque in divinis personis reperire poteris? Omnis enim persona humana est humana substantia et omnis persona divina divina utique substantia est. Nam et pater, quod est nomen persone, tam in divinis quam in humanis, nominat et nominando significat (94) substantiam cum proprietate relationis homini quidem forinsecus, ut dicitur, affixe, ut, verbi gratia, patriarche Abrahe paternitatis relatio ad Ysaac filium suum extra se positum pluribus accidentibus a se discretum. Que si omnia mathematica distinctione secernas locum tamen quo alter ab altero distat unum fingere non poteris. Aliter vero est in Deo. Nam et ibi pater substantiam cum proprietate nominat et nominando significat, sed eandem proprietatem sensu mathematico a Deo distingue sicut in homine, alienum est a fide catholica, qua credimus unum Deum in trinitate venerandum, ita utque in trinitate persona sit plenus Deus et divina substantia. Unde in trinitate una persona incarnata, credimus eiusdem persone substantiam incarnatam, sicut magnus Basilius totam divinitatem in sui persona incarnatam testatur in libro De Dispensatione, dicens: *Sicut confitemur deitatis naturam omnem perfecte esse in unaquaque ipsius personarum, omnem quidem in patre, omnem in filio, omnem in spiritu sancto, unde et perfectus Deus pater, perfectus Deus et filius, perfectus Deus et spiritus sanctus. Sic etiam et incarnationem unius persone sancte trinitatis, Dei verbi, dicimus omnem et perfectam naturam* (95) *deitatis in una ipsius persona unitam esse omni humane nature et non partem parti. Dicit autem divinus apostolus, quoniam in ipso habitat omnis plenitudo deitatis in corpore Domini, id est, in carne ipsius; et huius discipulus multum divina intuitus (vel indutus),<sup>1</sup> Dionisius, quibus omnino nobis in una ipsius communicavit personarum. Non autem dicere cogimur omnes deitatis personas videlicet nobis secundum personam uniri. Secundum nullam enim communicavit rationem pater et spiritus sanctus incarnationi verbi Dei nisi secundum beneplacitum et voluntatem. Omni enim humane nature dicimus unitam esse omnem deitatis substantiam. Nichil enim eorum que in nostra a principio plantavit natura nos componens reliquit. Sed omnia accepit corpus, animam intellectivam et rationalem, et horum propria. Animal enim sine unius horum parte non homo est. Totus enim totum assumpsit, et totus toti unitus est ut toti salutem largiatur. Idem post aliqua: Eadem natura in unaquaque personarum consideratur et cum dicamus naturam verbi incarnatam esse secundum beatos Athanasius et Cirillum deitatem dicimus unitam esse carni. Quare naturam verbi dicentes ipsum verbum significamus. Verbum autem et communitatem substantie et pro-(96)prietatem persone possidet. Item, post pauca: Sciendum autem quod quamvis ingredi invicem Domini naturas dicamus. Sed enim scimus quod ex divina ingressus factus est, hec enim omnia penetrat, sicut vult et circumscribit, per ipsam autem nichil. Et hec autem propria carni assignat permanens ipsa passibilis. Hec propter eos inducta sint qui sic putant personam filii Dei incarnatam, ut naturam persone autument ab incarnatione alienam. Quorum sensum vel potius insaniam non satis mirari possumus cum nomina hec, pater, filius, et spiritus sanctus, personarum praesentativa denegare non possint etiam substantiam significare. Neque enim vacua sunt nomina, sed unumquodque illorum significat substantiam cum proprietate sua, quod significatum Greci ypostasin (*υποστασις*) id est, subsistentiam, Latini, personam vocant. Ideoque cum ex tribus personis vel subsistentiis una incarnata conditur nullomodo substantia eius debet credi ab incarnatione alienata. Nam cum verbum, ut Basilius ait, et communitatem substantie et proprietatem persone possideat, verbo incarnato, substantia verbi non potest non esse incarnata. Et hoc est quod Leo Papa dicit veram divinitatem veris nature humane (97) sensibus indutam, et quod Gregorius dicit divinitatem calciatam, et Boetius dicit humanitatem naturali unitate divinitati coniunctam. Bene utique naturali, quoniam natura hominis ita est condita ut esset capax divine sapientie, que verbum Dei est. Que cum se multis hominum personis participandam indulserit, quos et sui participacione prophetas et sapientes fecit, solum sibi unitum hominem sic implevit ut non*

<sup>1</sup> Added in the margin.

tam recte sapiens quam ipsa Dei sapientia dici possit, praedicante apostolo, *Christum Dei virtutem et Dei sapientiam*.<sup>1</sup> Dicis itaque mihi: Si verbi divinitas incarnata est, patris autem atque verbi ac spiritus sancti una est divinitas, quomodo, verbi divinitate incarnata, pater non est incarnatus ac spiritus sanctus? Respondeo tibi quia quomodo illud sit non est huius temporis scire, credere autem necessarium. Credenti autem non erit impossibile omne verbum, *quia omnia possibilia credenti*.<sup>2</sup> Et plures quidem plura inducunt ad unius essentiae in tribus personis demonstrationem, verbi gratia, unius anime mentem, noticiam, amorem, vel unius mentis memoriam, intelligentiam, voluntatem, vel unius radii calorem, et splendorem, vel (98) unius arboris radicem, truncum, et ramum, vel unius aque fontem, rivum, et stagnum. Sed nos de omnibus huiusmodi similitudinibus id magis eligimus quod intellectum dat parvulis. Quis enim vel parvulorum non intelligat quod unius aque fons, rivus, et lacus tria hec omnino substantie sunt unius ac nature? Denique si talem fontem cogites, qui de sese rivum emittat, ita ut rivus in lacum se colligat, lacusque ipse venas fontis contingat, iuxta quod omnia flumina redeunt ad fontem suum ut iterum fluant. Nonne aqua ista in fonte, rivo, ac lacu, est una et eadem quamquam illa tria de se invicem praedicari non possint, ita ut dicatur fons esse rivus, aut rivus lacus? Adde quod, rivo infistulato, in solo rivo tota substantia illius aque infistulata cernitur, et tamen neque fons neque lacus vere dici potest infistulatus, cum tota eorum substantia in solo rivo sit infistulata. Item, Ex uno radio splendor et calor procedit nec ab illo recedit. Suntque tria hec, radius, splendor, et calor, licet suis proprietatibus distincta, tamen localiter indivisa, et splendor solus inter hec tria suscipit illumi-(99)nationem, sicut calor solus desiccationem. Verum quia in similitudinibus huiusmodi a creaturis ad creatorem accomodans, non licet usque ad imaginationes mutabilium descendere contemplantem vel disputantem, illuc per ista mutabilia mens est elevanda ubi non in unius singularitate persone sed in unius trinitate substantie sic tres unum sunt, ut unitas qua unum sunt ipsi sint quemadmodum ipsa divinitas, qua Deus sunt, et ipsa veritas et bonitas, qua verum bonum sunt, ipsi sunt.

## XXI. CONFUTATIO PRAVE DOCTRINÆ

Miror autem cum auctoritas habeat patrem esse veritatem, filium esse veritatem, spiritum sanctum esse veritatem, patrem, filium, et spiritum sanctum non tres veritates sed unam esse veritatem, quare magister Gillibertus talem glosam posuerit ut diceret in Boetium: Pater veritas, id est, verus est. Item, filius veritas, id est, verus est. Item, spiritus sanctus veritas, id est, verus est. Et collectim, pater, filius, spiritus sanctus non sunt tres veritates sed sunt una singulariter et simpliciter et simpliciter veritas, id est, unus verus. Qualem putamus expositio hec sensum importat nisi ut nec pater intelligatur esse ipsa veritas, sed veritate verus? Item, filius non veritas, sed veritate verus, et item de spiritu sancto et de tota trinitate idipsum astruit, quod Deus trinus non sit una veritas, sed, sicut ipse ait, unus verus veritate, quem secundum eius doctrinam nec pater nec filius nec spiritus sanctus nec trinitas (100) sit nec Deus sit, quomodo in alio loco divinitatem introducit, qua Deus sit non que Deus sit, ita enim dicit: Qui est homo, ut Plato, vel Cicero, vel Tripho, vel qui est Deus, ut pater, vel filius, vel spiritus sanctus, quod dicitur illorum quilibet esse homo, et istorum quilibet esse Deus, refertur ad substantiam non que est, sed qua est. Auctoris autem verba sic se habent. Qui homo est vel Deus, refertur ad substantiam, qua est aliquid, id est, homo vel Deus. Planiora fateor verba sunt auctoris quam expositoris, quoniam auctor eum, qui homo est, verbi gratia, Petrum vel Paulum, per hominis vocabulum substantivum substantiam significat humanam esse, et item illum qui Deus est, verbi gratia, pater, aut filius, aut spiritus sanctus, per Dei nomen substantivum substantiam divinam significat esse. Ac proinde quia substantia, tam divina per nomen Dei, quam humana per nomen hominis, de pluribus vera et naturali connexionem praedicatur, sicut nec humanam ita nec divinam substantiam dicit auctor alicubi singularem, cum iste novus expositor seu transpositor divinam

<sup>1</sup> 1 Cor. 1:24.<sup>2</sup> Mark 9:22.

substantiam creberrime dicat singularem contra synodalem diffinitionem, qua, ut Hylarius commemorat in synodis orientalibus et singularitas est reprobata contra Sabellium et Fotinum, et substantia vel equalitas ac similitudo naturalis inter patrem et filium est recepta contra Eunomium et Arrium, (101) ita ut essentia deitatis nec singularis diceretur nec diversa, quoniam singularis non est, que trium est, nec diversa que unitas ipsorum trium est, nec differens in se, quamquam de tribus alteritate relationis differentibus, ipse praedicetur magis et rectius per nomina essentialia quam per nomina sumpta. Magis enim proprie dicitur pater ac filius ac spiritus sanctus atque totus trinus Deus esse bonitas, veritas, iusticia quam bonus, verus, iustus, et similia, que omnia sunt in Deo una simplex, non tamen singularis, essentia. Si enim singularis esset ipsorum trium veritas, cum veritas de terra orta sit, quam intelligimus ipsum Dei filium de Maria natum, consequeretur id quod Sabellius voluit, patrem videlicet esse incarnatum et passum, filio eius, qui veritas est, incarnato et passo. Sed hoc secernit patrem veritatem ab incarnatione veritatis genite, quod ipse pater est veritas a nullo, filius autem est veritas de veritate, sicut est lumen de lumine, Deus de Deo, sapientia de sapientia, iusticia de iusticia. Unde recte patris imago dicitur et figura substantie eius in ipsius patris, scilicet, expressa substantia, tamquam si regis imago in auro expressa dicatur aurea substantia. Figura, inquit, substantie eius ne personam filii non substantiam intelligas, aut etiam proprietatem ipsius persone putes extra substantiam separatim intelligendam, aut forinsecus affixam, cum (102) sit in patre totus filius et totus in verbo pater. Non sic se habet relatio similis ad similem, equalis ad equalem, patris ad filium, atque ut auctor ait, eiusdem ad idem, licet non eiusdem ad eundem in creatrice trinitate sicut in rebus creatis, quia cognata rebus caducis alteritas bene admittit quorundam praedicamentorum inherentias et forinsecas affixiones, ut auctor assignat, que omnia vera theologia procul a Deo removet, docens eum, ut ait Augustinus, sine qualitate bonum, sine quantitate magnum, sine indigentia creatorem, sine situ praesentem, sine habitu omnia continentem, sine loco ubique, totum sine tempore sempiternum, sine ulla sui mutatione mutabilia facientem, nichil patientem. Quisquis Deum ita cogitat et non dum potest omnino invenire quid sit, pie tamen cavet, quantum potest, aliquid de illo sentire quod non sit. Et tamen sine dubio substantia, vel si melius hoc appellatur essentia, quam Greci *usyam* vocant, hec *usya* sive substantia divinitatis minime susceptibilis est contrariorum sive ullorum accidentium quoniam relationes que insunt ei non sunt accidentales, proprietates, quia pater Deus, sicut numquam fuit non Deus, ita numquam fuit non pater, et filius Deus, sicut numquam non Deus, ita numquam fuit non filius, et amborum connexio, sicut numquam fuit non connexio, praecedens ab utroque nec recedens. Unde (103) patri Deo non accidentale, aut sicut aiunt, forinsecus est affixum esse patrem, vel filio Deo esse filium, sed omnino patri eterno naturale est naturalem filium habere, similiterque filio eterno est naturale naturalem patrem habere, et illis ambobus naturale est invicem diligere se non extrinseca vel, ut aiunt, extrinsecus affixa dilectione, sed ea que Deus est, que divina substantia est, que tertia in trinitate persona est, et unius cum reliquis duabus *usye*, vel potius cum eis una *usya* est, quoniam sicut auctoritas habet, relatio multiplicat trinitatem, substantia conservat unitatem. Hec substantia divina de singulis personis divinis praedicatur, quomodo humana substantia de singulis, personis humanis. Et enim sicut Petrus vel Paulus est homo et humana substantia, ita pater Dei, seu filius Dei, Deus est et divina substantia, atque ideo, filio Dei incarnato, recte credimus divinam substantiam incarnatam, non tamen incarnato patre, qui nichilominus est divina substantia. Quomodo, inquis, potuerunt hec fieri? Et ego dico tibi: *Tu es magister in Frantia et hec ignoras?*<sup>1</sup> Si terrena exempla de unius aque fonte, rivo, et laco proposui vobis et non intelligitis, quomodo si dixerō vobis celestia credetis? Annon intelligitis, rivo infistulato, in ipso substantiam fontis et laci esse infistulatam, nec tamen fontem esse infistulatum seu lacum; amplius autem si naturam (104) verbi verbum dicit Basilius, doctor catholicus, ut supra ostendimus, quomodo non similiter naturam patris patrem nominabimus? Atque ita secundum hunc sensum catholicum nichil est aliud dicere

<sup>1</sup> John 3:10.



substantiam seu divinitatem filii esse incarnatam, quam ipsum filium, qui substantia divina et ipsa divinitas est, esse incarnatum, neque tamen inde consequitur patrem, qui similiter substantia divina et ipsa divinitas est, esse incarnatum in sua persona, cuius tamen substantia in filio suo est incarnata. Si enim Dei filius iam totus impassibilis est licet in sue nature humane consortibus fratribus esuriem, aut famem, sitim, nuditatem, exilium, carcerem, et infirmitatem se pati contestetur, quia natura videlicet in ipsum assumpta in suis hec patitur, ipso tamen in sue impassibilitatis gloria permanente, quid mirum quod Deus pater semper impassibilis creditur permansisse ac permanere, cuius tamen filius naturalis nature videlicet paterne consors *exinanivit se ipsum, formam servi accipiens*,<sup>1</sup> et in ea mortem crucis perferens, patris tamen et sua divinitate in sue impassibilitatis gloria permanente ac implente carnem, que in ipso Dei filio passa est? Sic dicit Augustinus: "*Implevit carnem Christi pater (105) et spiritus sanctus, sed maiestate, non susceptione.*"

XXII. QUOMODO PATER ET SPIRITUS SANCTUS IMPLESSE<sup>2</sup> CARNEM CHRISTI SIT CREDENDUS

Quidam in his dictis Augustini non aliud intelligunt nomine maiestatis carnem Christi implentis quam tunc intel[l]igitur cum omnis creatura maiestate Dei plena praedicatur, ipso Deo dicente, *Celum et terram ego impleo*.<sup>3</sup> Item, canit ecclesia: *Pleni sunt celi et terra gloria tua*. Sed hic sensus ex i[l]lis est ad magnificandum illud singulare sacramentum dominice incarnationis, in quo Maria exultans dicit: *Magnificat anima mea Dominum*.<sup>4</sup> Ergo, ut estimo, altius est intelligendum quod pater et spiritus sanctus dicuntur maiestate sua implevisse vel implere hominem illum qui dicit, *Pater in me manens ipse facit opera*,<sup>5</sup> qui in digito Dei, quem spiritum sanctum intelligimus, *eicit demonia*.<sup>6</sup> Si enim non aliter implevit patris ac spiritus sancti maiestas carnem Christi quam implet lapidem vel nos omnes, qui dicere possumus: *In ipso vivimus, movemur, et sumus*,<sup>7</sup> quid attinuit super tali plenitudine ammirari evangelistam dicentem: *Vidimus gloriam eius gloria quasi unigeniti a patre, plenum gratia et veritate*.<sup>8</sup> Item, alius evangelista plenum spiritu sancto illum commemorat, quando regressus est ab Iordane in Galileam<sup>9</sup> post baptismum, ubi et columba super ipsum conspecta hoc indicavit (106) quod tota plenitudo sancti spiritus perpetuo in ipso esset mansura, sicut Iohanni praedictum fuerat: *Super quem videris spiritum descendantem et manentem super eum, hic est qui baptizat in spiritu sancto*.<sup>10</sup> Homo igitur bona opera faciens, quo operante, operatur simul et pater et quem videns quis, videt et patrem, quique baptizat in spiritu sancto,<sup>11</sup> longe aliter impletus est maiestate patris et spiritus sancti quam vel sancti angeli et homines beati vel etiam tota creatura.

XXIII. DE VOCE PATRIS AD FILIUM ET DE SPECIE COLUMBE

Quid dicemus de voce patris audita cum videretur sanctus spiritus in specie columbe super hominem verbo ipsius patris unitum? Nonne tibi hec adtendenti omnis plenitudo divinitatis in homine assumpto inhabitantis manifestat semetipsam in patris voce, in filii corpore, in sancti spiritus columbina specie? *Tu es, inquit, filius meus dilectus in quo mihi complacui*.<sup>12</sup> Hoc ut iam supra commemoravimus, ab initio non dixit cum universa conderet, cum celi fabricam extenderet, vel mari terminum poneret, et omnia visibilia sive invisibilia mirabilis artifex componens, suo singula loco vel ordine distingueret. Et quidem placebant cuncta que fecerat quia *erant valde* (107) *bona*.<sup>13</sup> Sed nusquam in omnibus illis se ipsum sibi complacuisse insinuat. In hoc autem uno sibi complacet et dicit *mihi complacui*, quod longe aliud est quam si dixisset *tu mihi complacuisti*. Adtendamus ergo quid in Christo factum sit et videbimus quod vere pro magnitudine vel qualitate operis recte pater in illo sibi complacuerit, videlicet cum

<sup>1</sup> Phil. 2:7.

<sup>2</sup> MS. implessesse.

<sup>3</sup> Luke 4:14.

<sup>10</sup> John 1:33.

<sup>3</sup> Jer. 23:24.

<sup>4</sup> Luke 1:46.

<sup>11</sup> Cf. John 5:17, 14:9, 1:13.

<sup>5</sup> John 14:10.

<sup>6</sup> Luke 11:20.

<sup>12</sup> Matt. 3:17, etc.

<sup>7</sup> Acts 17:28.

<sup>8</sup> John 1:14.

<sup>13</sup> Gen. 1:10, 12, etc.

omnia fecisset Deus nichil omnino simile sibi vel equale fecerat, quamquam *ad imaginem et similitudinem sui hominem fecerit*.<sup>1</sup> Nec enim benivolentie creatoris sufficebat quod ea que fecerat erant cuncta valde bona, quia nichil inter omnia simile sibi vel equale videbat, sed ut iam dictum est tale quid omnino qualis ipse est creari non poterat. Quapropter multitudo creature infirma utpote de nichilo facta partim corruerat, neque suis viribus ullomodo restaurari valebat. Suggestit igitur tunc ipsa, que post apparuit in specie columbe, mitis et benevola patris caritas, quatinus ipsam virtutem, ipsum verbum per quod omnia fecerat, quoniam nichil equale sibi condiderat facture sue uniret et sic unum quid, cui nichil deesset, in ordine creature produceret, essetque creatura licet dispar conditione, tamen compar creatori suimet in Deum assumptione et (108) glorificatione. Quo facto, gratulatus omnipotens bonitas et applaudit sibimet dilectio columbina omnis invidentie nescia quod ope sua compar sibi facta sit humana creatura, dignum laude iudicans quod inopi nature sue eiusdem sue nature divitiis a Deo subvenerit ut totum regnum patris regere universam omnino celi ac terre rempublicam disponens, et in throno eius dominari eque ut ipse deinceps idonea sit. Hoc opus suum a Deo collaudat et in hoc sibi complacet in tantum ut cuicumque non complacuerit, quicumque cum laude et gratiarum actione non aspexerit, eum velut ingratum et vere superbum et invidum, a salute sua et ab eiusdem Christi, filii sui, regno repellat. Cuiusque utique regni, quia non est finis, cum sit immensum, recte quoque ipse rex immensus praedicatur, sicut ex opposito regulus dicitur, cuius regnum coangustatum est etiam si contingat ipsum gygantea statura extensum. Christus autem, id est, homo prae consortibus suis unctus in regem regni omnium seculorum, licet parvulus in cunis apparuerit, idem in throno maiestatis paterne magnitudine sue claritatis etiam angelorum pascit et toti curie celesti gaudium facit.

## XXIV. DE GAUDIO DISCIPULORUM

Ad quod gaudium discipulos suos adhuc mortalis invitabat (109) dicens: *Si diligeretis me gauderetis utique quia ad patrem vado, quia pater maior me est*.<sup>2</sup> Cum enim ipse in divinitate sua numquam patre minor extiterit, luce clarius constat, quod hec dicens filius Dei de natura hominis egit tanquam diceret: Quamdiu mortalis homo sum pater maior me est, at postquam transibo ex hoc mundo ad patrem, exaltata videlicet humanitate mea usque ad paterne glorie ineffabilem celsitudinem a qua numquam discessi per divinitatem, ex tunc videbitis me Dominum et salvatorem vestrum propter passionem mortis gloria et honore coronatum. Igitur si diligeretis me gauderetis utique transire me ab exilio mundi et externaliter sessurum ad dexteram patris intrare in gloriam regni mei quia videlicet hactenus ex quo carnem indui pater maior me est, et ego secundum mortalitatem eiusdem carnis non solum patre sed etiam immortalibus paulo minor sum angelis. Postquam vero usque ad patris consessum exaltatus fuero ex tunc inplebitur quod scriptum est: *Dixit Dominus Domino (110) meo, Sede a dexteris meis*<sup>3</sup> (et cetera). Item, *Gloria et honore coronasti eum, Domine, et constituisti eum super opera manuum tuarum*.<sup>4</sup> Quanta in hoc Christum diligentibus gaudendi causa est! Magna plane et ineffabilis. Unde nec illi plene inveniuntur Christum diligere, qui de iam facta hominis usque ad patrem exaltatione gaudentibus fidelibus nolunt congaudere, contententes filium hominis eundemque Dei filium adhuc minorem patre in sua quantumlibet glorificata humanitate. Quam sane minoritatem, si referunt ad humanitatis naturalem conditionem, non ad eiusdem supernaturalem exaltationem recte tolerantur, quoniam in hoc sensu neque nobis neque fidei catholice adversantur, verum si hominis iam in Deum glorificati arbitrantur non eandem gloriam, omnipotentiam, omnisapientiam, omnivirtutem, omnimaiestatem, que est patris altissimi, timendum sine dubio est ne a regno ipsius repellantur tanquam detractores invidi cum illo consortium habituri qui primus invidit altitudini huius Altissimi dicens in corde suo: *Ero similis Altissimo*.<sup>5</sup> *Nos vero congau-*

<sup>1</sup> Gen. 1:27.<sup>2</sup> John 14:28.<sup>4</sup> Ps. 8:6 f.; MS. c. e. d. et c. e. s. o. m. t.<sup>3</sup> Ps. 109:1; Matt. 22:44; Mark 12:36; Luke 20:42.<sup>5</sup> Isa. 14:14.

*dentes nature* (111) nostre in Dei verbo deificate et glorificate, deificate in conceptione, glorificate in resurrectione simul et ascensione, *accedamus cum fiducia ad tronum gratie*, sicut ait apostolus, *ut misericordiam consequamur et gratiam inveniamus in auxilio oportuno*.<sup>1</sup> Magnam quippe dat fidutiam nobis hominibus Deus homo in se naturaliter benedictus, qui venit in nomine Domini, pro nobis maledictum factus, ut nos natura filii ire filii benedictionis efficiamur in ipso. Licet enim contristare nos debeat quod nostra peccata causa mortis et contumelie illi fuerant, tamen quia ob eandem mortis contumeliam consecutus est homo assumptus magnam gloriam de qua dicit, *nonne sic oportuit pati Christum et ita intrare in gloriam suam*,<sup>2</sup> fiducia datur nobis peccatoribus ad tronum gratie ipsius puro corde accedentibus. Si enim Ioseph suis fratribus gratiam et misericordiam exinde promptius impendit, quod, occasione malicie illorum Deo mala ipsorum vertente in bonum, fuit exaltatus, quomodo verus Ioseph cui peccavimus, Deo vertente in bonum (112) quod iniue gessimus, propter nos passus malaque illi venerunt in bonum credendus est non parcere nobis maxime si ad ipsum confugerimus, et corde contrito planxerimus quod peccavimus in ipsum fratrem nostrum eundemque Dominum et iudicem nostrum. Ac(c)edamus igitur ut dixi cum fiducia ad tronum gratie, dominante ac residente super illum tronum fratre nostro, qui etiam non confunditur fratres nos vocare dicens: *Nuntiabo nomen tuum fratribus meis*.<sup>3</sup> Postulemus ab eo alimenta nobis et parvulis nostris, nec a precibus quiescamus donec ipse manifestet se ipsum nobis, dicens: *Ego sum Ioseph*,<sup>4</sup> vos cogitastis de me malum et Deus vertit illud in bonum, et exaltavit me sicut inpresentiarum cernitis. Ostendat se nobis dominatorem non solum in celo sed etiam in tota terra Egypti, ordinando regnum totius mundi ad sui honorem, ad suorum consolationem. Deinde quoque accedamus cum fiducia ad tronum dignitatis apostolice praesidente nimirum tali fratre qui, ut speramus, etiam pauperes nostri similes recognoscet ut fratres.

## XXV. DE BENIAMIN

Unde illo principante (113) speramus fratres eius couterinos habundantius benedici quam non couterinos; quomodo et ipse Ioseph cum reliquis fratribus penitentia condigna purgatis daret singulis binas stolas, Benjamin fratri suo uterino dedit trecentos siclos cum quinque stolis optimis, qui et in convivio recumbens cum fratribus quinque partibus habundasse super illos inventus est,<sup>5</sup> ammirantibus ipsis fratribus et fortasse indignantibus quia non erat eis ipse Benjamin couterinus, qui omnes de Lia vel de ancillis nati filios Rachelis eo quod a patre cunctis fratribus plus amarentur, non sincere primitus amaverunt donec postmodum correpti et correcti huiuscemodi emulationem deposuerunt. Nonne Ioseph qui legitur oves patris pavissee fratresque suos de crimine pessimo apud patrem accusasse, qui et postmodum pavit universam Egyptum, nomine simul et officio designat ordinem clericorum religiosorum crimina detestantium et regulari disciplina se ostendentium esse filios Rachelis (114) ecclesie videlicet primitive que quasi duos filios nobiles genuit<sup>6</sup> Ioseph pastorem ovium, in ordine clericorum sub apostolica regula tam paterne nobilitatis, quam et maternelis pulcritudinis insigne praeferentium, sicut de Ioseph legitur quod *erat decorus aspectu*<sup>7</sup> et Benjamin filium dextere in ordine monachorum item sub apostolica regula delectationes in dextera Dei querentium.

## XXVI. DE CYPHO IOSEPH

Neque vero illud est otiosum quod ciphus Ioseph argenteus, disponente ipso Ioseph, in sacco Benjamin fuit repositus<sup>8</sup> cuius figure veritatem nunc impleri videmus, quotiens de ordine monachorum secundum nomen Benonim,<sup>9</sup> quod interpretatur filius doloris se et mundum lugentium et secundum nomen Benjamin<sup>9</sup> quod est filius dextere delectationes in dextera Dei querentium quis assumitur ad regimen sacerdotale vel pontificale, sicut beatus papa Gregorius vere ciphus Ioseph argenteo ditatus et in pontificem Romanum electus egregia (115) moralitatis pocula

<sup>1</sup> Heb. 4:16.<sup>2</sup> Luke 24:26.<sup>5</sup> Gen. 43:34, 45:22.<sup>6</sup> Gen. 41:50.<sup>3</sup> Ps. 21:23; Heb. 2:12.<sup>4</sup> Gen. 45:3 ff.<sup>7</sup> Gen. 39:6.<sup>8</sup> Gen. 44:2 ff.<sup>9</sup> Gen. 35:18.



de ipso cippo ministravit. Notandum tamen quod ipse cippus non dicitur esse Benjamin sed Ioseph, quia non ad monachi silentium, sed ad clerici ministerium pertinet, quod si quis sic assumptus est in ecclesia docet, ut fratrem suum Ioseph adiuvet. Sic Petrus apostolus in sacerdotio princeps doctorum cum in sua nave Dominus resedisset atque inde turbas docuisset postea in altum ducta navicula cum laboraret ipse et frater suus Andreas intrahendo reti piscibus usque adeo repleto ut etiam rete rumpereetur ascivit socios qui erant in alia navi, scilicet Iohannem et Iacobum, ut adiuverent eum.<sup>1</sup>

## XXVII. DE DUABUS NAVIBUS APOSTOLORUM

Navis Petri apostoli, ordo cleri apostolicis disciplinis informati non incongrue intelligitur. Navis autem Iohannis qui super pectus Domini recubuit apte notat monachorum religiosorum quietem sanctam, de qua nonnumquam sic excitantur et in adiutorium cleri vocantur, ut pulchrum exhibeant spectaculum Petri et Iohannis (116) Ioseph et Benjamin sese invicem fraterne amantium et adiuvantium in domo Iacob filios Rachelis plurimum diligentis. Fratres enim ceteri sive *Lie* sive ancillarum filii, licet incliti et benedicti, minus inveniuntur a patre dilecti,<sup>2</sup> maxime Rubenite, licet numero multi, tamen merito inminuti. Emulantur enim filios Ioseph crescere cum sui ut estimant aliquanta diminutione. Nam cum pene occupaverint una cum prebendis omnes plebales ecclesias conducticiis committendo eas in tota Germania et Gallia, dolent saltem sibi eas esse subreptas, quas vident et invident cenobiis religiosis episcopali concessione subtitulatas vel commissas. Nonne, inquiunt, sicut monachi et regulares canonici habent plebales ecclesias, ita et nos item canonici, licet seculares, habere possumus eas, quod si nobis non licet, utique nec illis, ut unaqueque ecclesia, cui facultas suppetit, proprium habeat sacerdotem?

## XXVIII. DE RACHELE

Hec dicentes et spiritalibus viris avariciam (117) quasi scelus ydolatrie inpingentes, non adtendunt pulcritudinem seu latitudinem vestimentorum pulcherrime Rachelis quibus teguntur ista ecclesiastica beneficia cenobiis collata, sicut illa texit idola de domo Laban<sup>3</sup> surrepta. Denique habemus privilegia sedis apostolice, ut quicquid ex concessione pontificum vel donatione principum seu pia oblatione fidelium iuste possidemus, auctoritate apostolica teneamus, inter que nominatim aliquoties exprimuntur ecclesie capelle ac decime. Nonne sic scribens ecclesia Romana quasi Rachel formosa expandit se super possessiones cenobiorum, ut non quasi avaricia, sed quasi benedictio iudicentur que illius auctoritate ac benignitate a spiritalibus possidentur? Verumtamen nec ipsis viris religiosis hoc licere concedimus, ut in ecclesiis eorum sit conducticius vel minister absolute ordinatus, qualibet vage discurrentibus et se nunc hic nunc illic prostituentibus heu! plena est Germania et Gallia. Ipsi vero religiosi viri suas ecclesias aut per semetipsos regant, *sobrie, iuste, pie vivendo*<sup>4</sup> et populum sibi commissum in idipsum fideliter erudiendo, aut secundum canones obedientie stabilitatem exigant ab his, quos in adiutorium sui ad regendum populum volunt assumere, ne, si ovibus neglectis lanam et lac (118) accipiunt, non sub veste Racheline pulcritudinis tecti ab avaricia, que est idolorum servitus,<sup>5</sup> excusentur, sed tamquam idolatre ipsi eque ut seculares canonici dampnentur, immo etiam tanto illis deterius pereant, quanto speciem pietatis habentes et virtutem eius abnegantes dampnabilius peccant. Ubi enim salute animarum neglecta sola queruntur lucra terrena, ibi, quoniam<sup>6</sup> habundat iniquitatis avaricia querentis que sua sunt, *refrigescet caritas*<sup>7</sup> non querens que sua sunt. Que cum ex eo dinoscatur, quod communia propriis, non propria communibus anteposit, non habet locum in illis congregationibus, ubi omnes querunt *que sua sunt*,<sup>8</sup> propria communibus, non communia propriis anteponendo, immo et si qua illic videntur incommunibus in privatas abusiones distrahendo. Sicsic inordinate viventibus neque clericis neque monachis

<sup>1</sup> Luke 5: 5 ff.<sup>2</sup> Gen. 37: 3 ff.<sup>5</sup> Eph. 5: 5.<sup>6</sup> *Libelli*, quando.<sup>3</sup> Gen. 31: 34.<sup>4</sup> Titus 2: 12.<sup>7</sup> Matt. 24: 12.<sup>8</sup> 1 Cor. 13: 5.

ecclesias vel ecclesiastica bona defendimus, quia talibus congruit quod Iudaeis Christus<sup>1</sup> dicit: *Ideo auferetur a vobis regnum et dabitur genti facienti fructus eius.*<sup>2</sup> Item questus iniquos et turpes non aliquo velamine religionis defendendos, sed tamquam idolatriam cavendos iudicamus et velut immundiciam repudiamus, quia ubi talia pacienter sustinentur, non tam sub Rachele desuper sedente quam sub stramento cameli absconduntur idola. Sicut se habet istoria, ubi legitur ipsa Rachel subter stramento<sup>3</sup> cameli, animalis scilicet immundi, primitus idola posuisse ac deinde ipsa desuper sedisse, ut ostenderetur (119) differentia inter mundos, quibus omnia munda sunt,<sup>4</sup> et immundos et infideles, quibus nichil mundum, quorum etiam si qua religio praetenditur, stramentis cameli assimilatur ac proinde repudiatur. Quia ergo in domo Iacob regnante Christo, ut supra memoravimus, Petrum Petrique successorem quemlibet nomine Iacob vel potius Israel recognoscimus honoratum, cum fiducia bona petamus ab eo iudicium super turpitudine Ruben, super furore Symeon et Levi,<sup>5</sup> quatenus et non sinatur ultra crescere in domo Iacob, et illi *bellatores importuni* compellantur *se vasa iniquitatis* agnoscere, qui cum sint clerici et clericorum magistri, longe indisciplinatus movent guerras in domo Iacob quam laici principes.

## XXIX. DE BELLIS INORDINATIS

Nam sine ordine iudiciario castra obsidentes, incendia facientes et inter hec homicidia multa perpetrantes atque insuper divina sacramenta dispensantes cogunt nos gemere non quidem super militia ecclesiis a regibus et imperatoribus data, sed super malitia ex occasione militie subintroducta. Unde non hoc desideramus, ut ecclesia perdat militiam, sed malitiam,<sup>6</sup> prescripta videlicet saluberrima regula, secundum quam pontifices uti et non abuti debeant ipsa militia. Et quidem regulas antiquas super hoc habemus in scriptis Nycolai<sup>7</sup> pape specialiter ad Carolum Francorum regem scribentis et universaliter in conciliis Toletanis depromptas,<sup>8</sup> (120) quas non putamus canonum peritis Romanis ingerendas, maxime quia temporis novitas exigere videtur novas regulas, cum illis antiquis omnino sit iudicium ac negotium sanguinis interdictum sacerdotibus et reliquis personis Deo servientibus, nostri autem temporis qualitas fortasse aliud requirit, sicut ad beate memorie pontifices Romanos Innocentium et Eugenium<sup>9</sup> scripsisse nos meminimus. Erat autem summa tunc nostre suggestionis, ut ecclesia sibi collatos honores tenendo uteretur et non abuteretur illis, gladium verbi per spiritales, gladium ferri per seculares ministros ordinate ac iudicialiter vibrando; ne levitis inordinate pugnantibus eveniat illa maledictio, qua maledicti sunt Symeon et Levi a patre Iacob,<sup>10</sup> sed potius ipsis levitis ex obedientia iusta et iuste bellantibus proveniat illa benedictio, qua benedixit Moyses levitas, qui precipiente ipso pugnantes consecraverant manus suas in sanguine fratrum suorum. *Videns enim Moyses populum, quod esset nudatus, spoliaverat enim eum Aaron propter ignominiam sordis et inter hostes nudum constituerat, et stans in porta castrorum ait: Si quis est Domini, iungatur mihi. Congregatique sunt ad eum omnes filii Levi. Quibus ait: 'Hec dicit Dominus Deus Israel. Ponat vir gladium super femur suum. Ite et redite de porta usque ad portam per (121) medium castrorum et occidat unusquisque fratrem suum et amicum et proximum suum.' Fecerunt filii Levi iuxta sermonem Moysi. Cecideruntque in illo die quasi XXIII milia hominum. Et ait Moyses: Consecrastis manus vestras hodie Domino unusquisque in filio et fratre suo, ut detur vobis benedictio.*<sup>11</sup> Ecce hic filiis Levi propter bellum inordinatum a

<sup>1</sup> Libelli, Dominus.<sup>2</sup> Matt. 21: 43.<sup>3</sup> Libelli, stramentum.<sup>4</sup> Titus 1: 15.<sup>5</sup> Gen., chap. 34, and 49: 5-7.<sup>6</sup> Cf. GERHON'S *De Edificio Dei*, chaps. 23, 24, in which he criticises Adalbert II., archbishop of Mainz, for surrounding himself with a large body of knights, armed retainers, etc. Libelli, Vol. III, p. 153 f.<sup>7</sup> Nicholas I., 858-867, to Charles the Bald. Cf. MANSI, Vol. XV, col. 291; *Deusdedit. Coll. Can.*, Vol. IV, chap. 99, p. 416; *Grat.*, chap. XXIII, qu. 8; *J. L.*, 2788; *N. Archiv*, Vol. V,590. Gerhoh quotes it also in his *Com. to Ps. LXIV*, chap. 61, and in *De Ordine Donorum*.<sup>8</sup> Synod of Toledo, IV, chaps. 31 and 45; MANSI, Vol. X, cols. 628-30; HINSCHIUS, p. 369 f.; Synod of Toledo, XI, chap. 6; MANSI, Vol. XI, col. 141; HINSCHIUS, p. 409.<sup>9</sup> To Innocent II, Gerhoh sent his *Dialogus Inter Regularem et Secularem Clericum*. To Eugene III. he sent his *Commentary on Ps. LXIV*.<sup>10</sup> Gen. 49: 6 f.; Ex. 32: 25-29; Deut. 33: 8-11.<sup>11</sup> Ex. 32: 25 ff.

Iacob maledictis, item propter bellum ordinate peractum a Moyse promittitur benedictio in Exodo, que deprompta est in Deuteronomio,<sup>1</sup> quia nimirum sic erat futurum, ut benedictio in lege promissa filiis Levi daretur evangelio coruscante illis potissimum, qui ordinate procedunt ad bella, sive gladium spiritalem per semetipsos sive materiale per legitimos ministros movendo, ita ut quisque<sup>2</sup> miles prelietur suo modo et ordine, alter que sunt iusta docendo, alter docenti obediendo<sup>3</sup> alter gladio spiritus, quod est verbum Dei, armatus dicat cum apostolo: *Arma nostra non sunt carnalia, sed potentia Deo ad destructionem munitionum extollentium se adversus scientiam Christi*:<sup>4</sup> alter, ad preceptum sacerdotis ingrediens et egrediens, imitetur Iosue ducem Israhel, cui mandatum fuit a Domino, ut ad preceptum Eleazari sacerdotis<sup>5</sup> egrederetur et ingrederetur, (122) egrederetur scilicet ad pugnandum, ingrederetur ad vacandum.

## XXX. DE BENEDICTIONIBUS IACOB ET MOYSI

Puto autem consideratione dignum quod collatis et consideratis benedictionibus Iacob et Moysi<sup>6</sup> super XII tribus cum satis concordent amborum sententie in re[li] quis tribubus de sola tribu Levi quasi opposita et pene contraria videntur proposuisse. Nam ille Iacob scilicet de Symeon et Levi ait: *Vasa iniquitatis bellantia, in consilio eorum ne veniat anima mea, et in cetu illorum non sit gloria mea quia in furore suo occiderunt virum et in voluntate sua suffoderunt murum. Maledictus furor eorum quia pertinax et indignatio eorum quia dura. Dividam eos in Iacob et disperdam eos in Israel*.<sup>7</sup> Moyses autem dicit in benedictione Levi: *Perfectio tua et doctrina tua viro sancto tuo quem probasti in temptatione<sup>8</sup> et iudicasti ad aquas contradictionis. Qui dixit patri suo et matri sue nescio vos et fratribus suis ignoro illos et nescierunt filios suos. Hi custodierunt eloquium tuum et pactum tuum servaverunt iudicia tua, O Iacob et legem tuam O Israel. Ponent thumiam in furore tuo et holocaustum super altare. Benedic, Domini, fortitudine eius et opera manuum illius suscipe. Percute dorsum inimicorum eius et qui oderunt eum non consurgant*.<sup>9</sup> (123) Unde, queso, ista diversitas in patriarcha et legislatore, ut alter maledicendo, et alter benedicendo loqueretur de unius tribus hominibus? Profecto non sine causa diversa diversitas ista. Nam de tribu illa erant futuri sacerdotes mali qui essent vasa iniquitatis bellantia et quorum furor pertinax et indignatio dura. Horum principui fuerunt pontifices et Pharisei qui collegerunt concilium et inierunt consilium adversus Christum. De quo videlicet consilio et concilio intelligitur illud patriarche dictum in consilio eorum ne veniat anima mea et in cetu illorum non sit gloria mea quia in furore suo occiderunt virum. Secuntur eos adhuc nonnulli Christum in suis membris occidentes et furore pertinaci pauperes eius persequentes maxime indiscipulati cathedrales clerici clericis disciplinatis et regularibus adversantes furore pertinaci. Dico igitur in consilium eorum ne veniat anima mea et in cetu illorum non sit gloria mea. Et quia iniqui sunt cetus eorum fiat secundum quod scriptum est dividam eos in Iacob et disperdam eos in Israel. Divisio et dispersio sive disperditio hec Levitarum perversorum per principes Romanos, Titum et Vespasianum<sup>10</sup> ceptum per pontifices Romanos tandem consumetur ut veris et bonis Levitis in eorum locum introductis ac per ecclesiam totam multiplicatis illa detur benedictio que per Moysen deprompta sed (124) per verum legis latorem data est. Et enim benedictionem dedit nove legis lator quam veteris legis lator et si potuit prænuntiare non potuit dare. Perfectio, inquit, tua et doctrina tua viro quem probasti in temptatione.

## XXXI. DE AQUA CONTRADICTIONIS

Virum probatum in temptatione cognoscimus Petrum apostolum et cum illo cetum apostolicum precipue *ad aquas contradictionis*,<sup>11</sup> apostolis videlicet Christum filium Dei credentibus hominibus autem huic fidei contradicentibus et aliis eum Iohannem, aliis Helyam, aliis Ieremiam

<sup>1</sup> Gen. 34; Ex. 32: 25 ff.; Deut. 33: 8 ff.<sup>7</sup> Gen. 49: 5 ff.<sup>8</sup> MS. teptatione.<sup>9</sup> Deut. 33: 8 ff.<sup>2</sup> Libelli, quisquis.<sup>3</sup> Libelli, inserts a.<sup>10</sup> Refers to the destruction of Jerusalem by Titus, in<sup>4</sup> 2 Cor. 10: 4f. <sup>5</sup> Num. 27: 21. <sup>6</sup> Gen. 49, and Deut. 33. <sup>70</sup> A. D.<sup>11</sup> Ps. 80: 8, 105: 32.



aut unum ex prophetis esse dicentibus. Apud aquam contradictionis huius probata est fides apostolorum cum Petrus respondit pro omnibus *Tu es Christus filius Dei vivi*.<sup>1</sup> Perfectio quoque ac doctrina Christi dicentis *si vis perfectus esse vade vende que habes et da pauperibus et sequere me*,<sup>2</sup> item, *qui non renuntiat omnibus que possidet non potest meus esse discipulus*,<sup>3</sup> in illis et eorum sequacibus est inventa qui etiam parentes relinquendo ac filios suos nesciendo cum nudi nudum Christum sequerentur custodierunt eloquium Domini et pactum eius servaverunt. Unde prae ceteris hanc benedictionem promeruerunt: *Ponent thimiam in furore tuo et holocaustum super altare tuo*, quibus dictis commendatur eorum sacerdotium. Conclusio vero totius benedictionis hec est: *Benedic, Domine, fortitudini eius et opera manuum eius suscipe. Percute (125) dorsa inimicorum eius et qui oderunt eum non consurgant*.<sup>4</sup> Pulchre cum de sacerdotio<sup>5</sup> loquens pluraliter praemississet de istis filiis Levi "*ponent thimiam in furore tuo*" de principatu locuturus ad singularem numerum transiens ait "*Benedic Domine fortitudini eius*," etc. Inter ceteros enim Christi apostolos unus constitutus est princeps apostolorum cui et dictum est: *Confirma fratres tuos*.<sup>6</sup> Nonne magna et benedicta est fortitudo principatus illius, cui *porte inferi non poterunt prevalere*?<sup>7</sup> Item quod dicitur: *Percute dorsa inimicorum eius et qui oderunt eum non consurgant*,<sup>8</sup> nostris in diebus etiam ad literam factum cernimus, cum populus Romanus principatui apostolico inimicus nuper cesus est non in facie tamquam strenue pugnans, sed in dorso tamquam ignaviter fugiens ante faciem principatus apostolici et imperatoris ab illo coronati.<sup>9</sup>

## XXXII. DE PRINCIPATU LEGITIME ORDINATO

Sic in principatu legitime ordinato nostris in diebus *exurgat Deus et dissipentur inimici eius et fugiant qui oderunt eum a facie eius*.<sup>10</sup> Gaudemus plane gaudendumque censemus populo Christiano sic humiliato populo Romano, quia populus urbis magis inde superbiens quod dicatur populus Romanus, quam inde gaudere volens ut dicatur populus Christianus, contra leges divinas erigit potestates inordinatas,<sup>11</sup> *quibus qui resistunt Dei ordinationi utique non resistunt, quoniam que a Deo sunt ordinata sunt*.<sup>12</sup> Memini me (126) cum fuissem in urbe,<sup>13</sup> contra quendam Arnoldinum<sup>14</sup> valenter literatum in palatio disputasse, et ipsa disputatio, monente papa Eugenio, reducta in scriptum pluribus auctoritatibus aggregatis, posita est in scrinio ipsius, ubi cum adhuc possit inveniri, non opus est iam scripta iterum scribi.

## XXXIII. DE REGALIBUS COLLATIS

Attamen adhuc *eadem scribere mihi quidem non pigrum*,<sup>15</sup> sicubi videretur necessarium, sicut illud quod ibidem copiose tractatum est et nunc succincte perstringendum videtur de regalibus ecclesie collatis. De his enim cum alii contendant ecclesiis eadem occasione talium periclitantibus auferenda, alii vero ea semel ecclesiis collata in usus earum tenenda,<sup>16</sup> posterior magis placet sententia quia, sic ipsa regalia bona ecclesiasticis interserta sunt, ut vix ab invicem discerni valeant. Huc accedit, quod *que Deus coniunxit homo separare non debet*.<sup>17</sup> Coniunxit

<sup>1</sup> Matt. 16:13 ff.; Mark 8:27 ff.; Luke 9:18 ff.

<sup>2</sup> Matt. 19:21; Mark 10:21; Luke 18:22.

<sup>3</sup> Luke 14:33.

<sup>4</sup> Deut. 33:8 ff.

<sup>5</sup> MS. sacerdotium.

<sup>6</sup> Libelli, suos. Luke 22:32.

<sup>7</sup> Matt. 16:18.

<sup>8</sup> Deut. 33:11.

<sup>9</sup> A reference to the battle between the Romans and Frederick I. on the day of his coronation by Adrian IV., June 18, 1155; cf. OTTO OF FREISING, *Gesta Friderici*, Book II, par. 33.

<sup>10</sup> Ps. 67:2.

<sup>11</sup> In 1143 the lower nobility in Rome rebelled against the Pope, expelled him from the city and established a government of their own. Adrian IV. was, at the time Gerhoh

wrote this letter, in Benevento, because he was not allowed to enter Rome.

<sup>12</sup> Rom. 13:2.

<sup>13</sup> Cf. Com. to Ps. 54, Migne, *Pat. Lat.*, Vol. CXCIII, col. 1672. Com. Ps. 64 Migne, Vol. CXCIV, col. 19. Com. Ps. 65 Migne, CXCIV, col. 139.

<sup>14</sup> A follower of Arnold of Brescia. Probably the same disputation which Gerhoh mentions in his Com. to Ps. 64.

<sup>15</sup> Phil. 3:1.

<sup>16</sup> Gerhoh had, in his earliest writings, urged that the churches be deprived of the regalia, in order to end the struggle about investiture.

<sup>17</sup> Matt. 19:6.

vero ea Deus Christus in sua propria persona indutus apud Herodem primo veste alba,<sup>1</sup> que sacerdotalis est, deinde apud Pilatum<sup>2</sup> veste purpurea, que regalis est, ut ostenderet, se non solum ex pontificali, sed etiam ex imperiali dignitate super omnes principatus totius orbis dominaturum. Dicis itaque mihi: *Si non debent ecclesiis auferri ipsa regalia, ex quibus episcopi habentes ea debent Cesari que Cesaris sunt, sicut ex ecclesiasticis facultatibus (127) Deo que Dei sunt,<sup>3</sup> quomodo puniri poterunt episcopi vel abbates nolentes reddere Cesari que Cesaris sunt, cum eadem auferri eis non poterunt, ne, sicut oblatio talium in sanctuario fuit devota, sic oblatio eorum a sanctuario fiat sacrilega?* Respondeo plane mihi placere, ut reddantur que sunt Cesaris Cesari, et que Dei Deo, sed sub ea cautela, ut non vastetur ecclesia vel nudetur saltem veste alba, si nimis incaute abstrahitur ei purpura. Fecerunt hoc milites illi pagani, qui Christum spoliaverunt veste<sup>4</sup> utraque nudum crucifigendum, sed absit ut idipsum faciant milites Christiani. Verumtamen ut insolentia non crescat ultra modum contra imperium, ex necessitate iusiurandum, licet hoc ipsum sit a malo, interponitur, ut sibi fidem servant mutuo pontifices et reges,<sup>5</sup> quemadmodum patriarcha fidelis Abraham contentione orta pro eadem sopienda et in posterum cavenda iuravit regi Abimelec<sup>6</sup> et ille sibi secus puteum iuramenti. Ergo sicut illi sibi mutuo iuraverunt, sic adhuc reges iurant iusticiam ecclesie, cum consecrantur et coronantur, et episcopi quoque regalia tenentes regibus iurant fidelitatem salvo sui ordinis officio. Si ergo fuerit violatum iurisiurandi sacramentum, violator, sit abbas aut episcopus, iure utroque spoliatur honore coram suo iudice sacerdotali (128) scilicet et illo quem de regalibus habet. Si enim periurus episcopus tenens episcopatum, spoliandus regalibus exponatur militibus inde consequetur confusio magna, qua invalescente minuentur et vastabuntur ecclesiastica bona, dum nimis incaute abstrahentur ipsa regalia et ita scindetur pallium Samuelis,<sup>7</sup> quo scisso scindetur et regnum et periclitatur<sup>8</sup> sacerdotium. Quod ita demum precaveri poterit, si episcopus nonnisi prius alba veste indutus purpuram suscipiat,<sup>9</sup> quam nec amittat, nisi et alba propter infidelitatem carere debeat, ut videlicet peccatum persone in detrimentum non vertatur ecclesie; sicut iam alicubi factum scimus personis quibusdam inordinate purpuratis, antequam veste alba prout oportuit induerentur, dum necdum spiritaliter post electionem examinati aut consecrati, sunt regalibus amplificati et ita nimis confortati, ut postmodum non potuerunt examinari, sed oporteret eos ad placitum regis et militum consecrari. Similiter personis quibusdam ante iudicium spiritale depurpuratis contigit ecclesiastica bona vastari, minui et scindi, scisso consequenter et regno, sicut Samuelis pallio (129) scisso scissum est regnum a Saule pallium sacerdotale scindente. Enimvero arbitrantur quidam iuxta illud apostoli: *Non prius quod spirituale, sed quod animale est*<sup>10</sup> animalia et temporalia, que a regibus habentur, primitus electe persone conferenda et inde spiritualia spirituali<sup>11</sup> consecratione percipienda, quod esset primitus purpurea, deinde alba veste indui contra ordinationem ipsius Christi qui primitus alba, deinde purpurea veste voluit in passione sua indui. Quibus humiliter suggerimus, ut apostoli verba premissa dicta sciant non de novo, sed de veteri Adam, in quo non prius quod spirituale, sed quod animale hoc prius erat.

## XXXIV. COLLATIO VETERIS ADE AD NOVUM

Formavit enim Dominus hominem de limo terre secundum id quod in homine animale seu etiam corporale est, ac inde *inspiravit in faciem eius spiraculum vite*,<sup>12</sup> quod spiraculum spirituale est. Atque ideo episcopi secundum ipsum formati creduntur, qui prius in corporalibus,

<sup>1</sup> Luke 23: 11.<sup>2</sup> John 19: 2.<sup>3</sup> Matt. 22: 21.<sup>6</sup> Gen. 21: 23 ff.<sup>7</sup> Sam. 15: 27 ff.<sup>4</sup> Cf. Matt. 27: 35; Mark 15: 24; John 19: 23 f.<sup>8</sup> Libelli, periclitabitur.

<sup>5</sup> Gerhoh here refers to the oath which the emperor took to the pope at the time of his coronation by the latter, and to the oath which the pope took to the emperor, and also to the oaths which the bishops took to the emperor when invested by him with the regalia.

<sup>9</sup> Which would be contrary to the terms of the Concordat of Worms.

<sup>10</sup> Cor. 15: 46.<sup>11</sup> Libelli omits.<sup>12</sup> Gen. 2: 7.

deinde in spiritalibus perficiuntur. Secundus vero Adam prius erat in spiritu ac deinde cepit esse in corpore, quod cum ipse in spiritu et spiritus esset, propter nos accepit mortale sive animale; ac proinde secundum ipsum fiunt episcopi, qui primo regulariter electi et spiritaliter examinati atque consecrati postremo propter imminentem necessitatem super albam vestem suscipiunt et purpuream, (130) ne hac repudiata periclitetur ecclesia ipsis commissa. Qua si obrepente perfidia in regnum commissa iudicabuntur spoliandi, veste simul alba sunt privandi, ne item periclitetur ecclesia cum sui honoris integritate illi auferenda et alteri committenda, ut sola puniatur persona perfida, ecclesia permanente in integritate sua, quoniam, ut dictum est, que *Deus coniunxit non est bonum, ut homo separet*.<sup>1</sup>

## XXXV. DE PURPURA REGIS VINCTA CANALIBUS

Sint ergo pariter in una persona vestis alba et purpurea, sed ita, ut sit purpura regis iuncta canalibus, frequenter scilicet in illis canalibus tinguenda, quibus et purpura Christi regis intincta dum regni sui omnia consilia et negotia secundum beneplacitum Dei patris ordinavit promovenda. Unde Pilato aliam sibi tincturam offerenti et ingerenti respondit: *Regnum meum non est de hoc mundo*.<sup>2</sup> Ac si diceret: Non me regem nego, sed regnum meum non est de hoc mundo, quia nec ego secundum beneplacitum huius mundi regnare dispono, neque per favorem huius mundi regnum mihi collatum recognosco. Item, aliam tinturam offerebant ei fratres eius dicentes: *Transi hinc et vade in Iudeam ut et discipuli tui videant opera tua que facis. Nemo quippe in occulto quid facit et querit ipse in palam* (132)<sup>3</sup> esse. *Si hec facis, manifesta te ipsum mundo. Neque enim fratres eius credebant in eum*.<sup>4</sup> Ecce canale plenum sordibus mundane glorie in quod iste rex glorie purpuram suam nolebat intingere. Respondens enim dixit istis consiliariis indisciplinatis: *Tempus meum nondum advenit, tempus autem vestrum semper est paratum. Non potest mundus odisse vos, me autem odit quia ego testimonium perhibeo de illo quia opera eius mala sunt. Vos ascendite ad diem hunc, ego autem non ascendam quia tempus meum nondum advenit*.<sup>5</sup> Maluit autem iste rex glorie, mutuando consilio de canalibus divine scripture ita regnare, ut haberet odium mundi quam laudes mundi captando suam regalem purpuram sordidare, sicut nunc purpuram suam sordidant qui pro ampliando numero militum beneficiant vel potius inmaleficient non solum que habent regalia, sed insuper ecclesiastica bona, etiam decimas, usui solius pietatis divinitus mancipatas. Et revera isti digni essent nudari non solum purpuram sed etiam veste alba, illi precipue, qui ad augendum non solum numerum militie, sed etiam cumulum malitie, portionem sacerdotum in decimis eatenus in usu ecclesiastico qualitercumque habitis diminuunt atque in laicas abusiones transferunt, sacrum de sacro auferentes atque in hoc sacrilegium grande committentes.

## XXXVI. DE DECIMIS

Cum enim secundum canones exceptis ecclesiis vite communis, ubi asserente (133) sancto Gregorio nulla decimarum sive oblationum facienda est portio, sicut idem beatus instruit Augustinum Anglorum archiepiscopum, quatuor fieri debeant portiones de decimis et oblationibus ex omnibus his partibus, vix illa sola remansit ecclesie que ad clericos pertinere videbatur ceteris decimarum partibus in laicorum beneficia<sup>6</sup> immo maleficia profligatis. Verum quia clerici per divites ecclesias constituti videbantur episcopis alicubi superhabundare, cathedrales canonici clericos ipsos plebales vel ecclesias eorum susceperunt ab episcopis in beneficium, et ipsi a Deo comminuerunt portionem sacerdotum, trahentes pene omnia in suas abusiones, ut non possunt inveniri clerici, qui talibus portiunculis vellent esse contenti nisi vilissimi concubinarij conducticii, usurarii, aleatores, venatores, negotiatores, girovagi absolute ordinati, sacerdotum filii<sup>7</sup>

<sup>1</sup> Matt. 19:6.<sup>2</sup> John 18:36.<sup>6</sup> *Libelli*, beneficium.<sup>3</sup> Through carelessness the number 131 was omitted.<sup>7</sup> No doubt very unpalatable to Adrian IV. since he was the son of a priest.<sup>4</sup> John 7:3 ff.<sup>5</sup> John 7:6 ff.



ceterique in hunc modum sacris officiis indigni. Cui malo volens remediari beate memorie Papa Eugenius in Remensi concilio statuit *ut unaqueque ecclesia, cui facultas suppetit, proprium habeat sacerdotem, cui de bonis ecclesie tantum prebeatur beneficii unde convenienter valeat sustentari*.<sup>1</sup> Occasione huius capituli subtrahuntur multa sacerdoti plebem regenti et exinde inbeneficiantur laici, quasi non sufficiat magnitudo illius antiqui sacrilegii, quo preter clericorum partes pene (134) omnia laici occupaverunt, nisi accedat illis et portio clericorum de novo noviter invento sacrilegio. Interdum quoque suis capellanis talia beneficia decimarum prestant, et hoc esset utcumque tolerabile, nisi quod decime semel ab ecclesiis abalienate ac sub nomine beneficiorum preste, licet cathedralibus clericis vel capellanis, illis decedentibus facile succedunt laici in locum talis beneficii, quod et iam factum scimus.

## XXXVII. DE PARASCEVE

Unde malum simile futurum timentes, hoc ipsum nunc sollicitudini apostolice suggerimus ut in ista parasceve<sup>2</sup> qua altaria sic penitus nudantur ut nec panniculus hucusque illis relictus relinquatur, saltem una hora evigilet Petrus, lamentationibus Ieremie plorantis excitatus et mulierum sedentium ad munumentum Iesu planctu attonitus, dum quasi extinctis in ecclesia Dei luminaribus expectatur a fidelibus divina contra tantas desolationes consolatio in qua post lamentationes Ieremie sonet illud canticum in auribus ecclesie realiter quod in pascali vigilia profertur vocaliter archidiacono dicente:

## XXXVIII. DE VIGILIA PASCE

*Exultet iam angelica turba celorum et pro tanti regis victoria tuba insonet salutaris. Gaudeat tellus tantis irradiata fulgoribus eterni regis splendore illustrata totius orbis se sentiat amisisse caliginem. Letetur et mater ecclesia tanti luminis* (135) *adornata fulgoribus*.<sup>3</sup>

Nudatis in parasceve altaribus et extinctis noctu luminaribus non canticum leticie sed planctus tristicie auditur in ecclesia sed in candela quam Zosimus<sup>4</sup> Papa sacrari statuit quasi columpna ignis pariterque accensis aliis luminaribus pascali festo congruentibus atque ornatu sollempni vestitis altaribus quasi pro summi regis victoria tuba intonat salutaris amicos ipsius victoris letificans et hostes altarium eius nudatores et luminum suorum extinctores conturbans. *Quis scit si convertatur et ignoscat Deus peccatis*<sup>5</sup> *nostris* quibus iram meruimus et *relinquat post se benedictionem* qua super ecclesiam Dei thesaurizata et manifestata vel in pascali vigilia universali resurrectione proxima exultet iam angelica turba celorum exultent divina misteria dum pro Christi regis eterni victoria tuba intonet salutaris. Quenam hec tuba est nisi tuba novissima cuius in Apocalypsi clangor praeauditus est in hunc modum: *factum est regnum huius mundi Domini nostri et Christi eius et regnabit in secula seculorum*.<sup>6</sup> In principio nove gratie secrete unus angelus non quasi tuba grandisona sed tamquam sibilus aure lenis auribus virginis insonuit, dicens: *Ecce concipies et paries filium et dabit illi Dominus Deus sedem David patris eius et regnabit in domo, Iacob, in eternum* (136) *et regni eius non erit finis*.<sup>7</sup> At in novissima tuba facte sunt voces magne in celo dicentes: *Factum est regnum huius mundi Domini nostri et Christi eius et regnabit in secula seculorum. Et XXIIII seniores qui in conspectu Dei sedent in sedibus suis ceciderunt in facies suas et adoraverunt Deum dicentes: Gratias agimus tibi Domine Deus omnipotens qui es et qui eras qui accepisti virtutem tuam magnam et regnasti et irate sunt gentes et advenit tua ira et tempus mortuorum iudicari et*

<sup>1</sup> The council at Rheims, 1148, can. 10; Mansi XXI, col. 716.

<sup>2</sup> On Good Friday, after the mass, it is the custom to strip all the altars in all the churches of their vestments and decorations. This is done as a symbol of sorrow, and the altars remain thus completely denuded until the next day when they are again decorated and put in order for service.

<sup>3</sup> This is sung in the service of blessing the candles on the Saturday of Holy Week. The full text is to be found in the missal. It is popularly attributed to St. Augustine, but on what ground I do not know.

<sup>4</sup> Zosimus, 417-18.

<sup>5</sup> Joel 2:14; Jonah 3:9.

<sup>6</sup> Rev. 11:15.

<sup>7</sup> Luke 1:31 ff.

*reddere mercedem tuis servis prophetis et timentibus nomen tuum pusillis et magnis, et exterminandi eos qui corruperunt terram.*<sup>1</sup> Quod regnum huius mundi ad gloriam Christi regnantis in domo Iacob sit omnino translatum vero Ioseph super currum Pharaonis exaltato quodque inde irate sint gentes inaniter super hoc frementes,<sup>2</sup> non indiget expositionem, ipsa rerum evidētia demonstrante verum Ioseph in tota terra Egypti dominantem et regnantem in domo Iacob. Dominus quippe generaliter omnium, specialiter est rex bonorum et fidelium quibus et reddet mercedem, sibi digne ministrantes honorificando, et exterminando eos qui corruperunt terram, corrupti videlicet et abhominabiles facti in studiis suis. Inter omnes autem et super omnes qui corruperunt terram notabilis et culpabilis ille magis invenitur de quo in Esaia legitur: *In terra sanctorum inique gessit* (137) *et non videbit gloriam Domini.*<sup>3</sup> Cum enim dicat sanctus Iob: *Terra data est in manus in piorum,*<sup>4</sup> quod exponente Gregorio, de corpore Christi ac deinde quoque de sanctorum corporibus intelligi potest, qui corpus Christi de quo scriptum est: *Non dabis sanctum tuum videre corruptionem*<sup>5</sup> quantum in ipsis est corrumpunt rursus crucifigentes et ostentui habentes *rei facti corporis et sanguinis*<sup>6</sup> eius indigne sacramentis eius *participando* et sanguinem Testamenti Novi conculcando, ipsi merito exterminandi sunt, id est, excommunicandi, vel nunc, si eorum praeveritatio manifesta est, vel in divino iudicio, quando, in finem canente hac septima et novissima tuba,<sup>7</sup> non erit qui se abscondat a clangore eius. Cum autem nunc a pluribus gratie Dei contumelia fiat et ipsa in luxuriam seu maliciam transferatur quia hoc sacrilegium publice commissum latere non potest, cum facta eorum sint manifesta praecedentia ad iudicium, iure a iudicibus ecclesie forent exterminandi, si non iudices ipsi essent actores vel auctores tanti sacrilegii. Actores enim sunt cum ipsi hoc faciant, auctores cum suos clericos ad idem iuvant, praestando illis ecclesiastica beneficia que rursus ipsi clerici praestant militibus aut expendunt in luxuriis et inpudiciis, episcopis eorum hoc scientibus, neque enim in occulto fiunt ista, et minime prohibentibus, immo eos qui (138) talia inprobant odientibus et persequentibus. Huc accedit quod pro scuto suae defensionis usurpant sibi praenotatum capitulum Remensis concilii arbitantes hoc sibi permissum, dummodo sacerdos ecclesie ad placitum eorum, non secundum diffinitiones canonum, accipiat, unde, sicut illic dictum est, convenienter sustentari valeat, ut quod illi superest prout volunt expendant vel militibus infeodando vel clericis cathedralibus prestando, qui ipsis non prohibentibus eadem prestant militibus vel expendant in suis mulieribus.

## XXXIX. DE ABHOMINATIONE DESOLATIONIS

Atque ita sive per episcopos sive per clericos inbeneficiantes, dum semel in manus laicorum venerint res ecclesie, ille quoque de quibus actenus ministri altaris qualescumque sustentabantur et altaria vestiebantur, ecclesie ornabantur, post antiquam desolationem nostris in diebus augmentata desolatione potest cognosci *abhominatio desolationis in quolibet loco sancto*<sup>8</sup> suis pertinentiis omnino spoliato et denudato atque in laicas abusiones alienatis rebus, que si ministris altaris alicubi habundare viderentur, non militibus aut inpudicis mulieribus, sed Christi pauperibus aut cum Petro et Augustino militantibus aut cum Iohanne ac sancto Benedicto<sup>9</sup> sic manentibus, ut de ipso Iohanne dictum: *Sic eum volo manere,*<sup>10</sup> aut certe cum Lazaro<sup>11</sup> mendicantibus erat dandum quod superesset iuxta illud evangelicum: *Quod superest date et omnia munda*<sup>12</sup> *erunt* (139) *vobis.*<sup>13</sup> Certe ut multum condescendatur in ista causa, si episcopi vellent suos cathedrales clericos iuvare de superabundantia plebanorum sacerdotum, rectius et tolerabilius illa superabundantia plebanis detracta firmari poterat in commune stipendium fratribus in congregatione viventibus a preposito distribuenda, prout cuique opus esset, quam quod aliquo fratrum de multarum ecclesiarum beneficiis ditato et altero in sua paupertate neglecto

<sup>1</sup> Rev. 11: 15: cf. Rev. 5.<sup>2</sup> Ps. 2: 1.<sup>9</sup> St. Benedict, the founder of the Benedictine order of monks.<sup>3</sup> Is. 26: 10.<sup>4</sup> Job 9: 24.<sup>10</sup> John 21: 22.<sup>11</sup> Luke 16: 19 ff.<sup>5</sup> Ps. 15: 10; Acts 2: 27, 13: 35.<sup>6</sup> 1 Cor. 11: 27.<sup>12</sup> Libelli, mundi.<sup>13</sup> Luke 11: 41.<sup>7</sup> Rev. 11: 15.<sup>8</sup> Matt. 24: 15.

alius quidem esurit, alius autem ebrius est, quod apostolus in Corinthiis inprobat,<sup>1</sup> dum habentes confundunt eos qui non habent, ac proinde apostolo iudice sic illis convenientibus in unum iam non est dominicam cenam manducare. Multo autem convenientius esset, ut ipsi plebani retinere omnia, que secundum canones ad se pertinent, cogerentur de sibi conditis rebus recte agere, sufficientes ministros canonice sibi aggregatos una secum fraterne sustentando. Et hoc fortasse intendit papa Eugenius decernens, tantum sacerdoti relinquendum, unde convenienter sustentari valeat.<sup>2</sup> Ille dixit 'convenienter,' sed nunc agitur valde inconvenienter, dum et sacerdos ultra modum pariterque sibi commissa ecclesia depauperatur, et id quod ei detrahitur ecclesie alienatur et mundo immundo, qui *in maligno positus est*,<sup>3</sup> confertur, ut fiat (140) supra modum nuda ecclesia, non habens vel panniculos hucusque sibi relictos ad verecunda saltem sua tegenda. Neque vera nos hec dicendo favemus ipsorum plebanorum irreligiositati, sed vellemus peccata personarum non verti in detrimentum ecclesiarum immo vellemus ipsas personas emendari vel mutari, manente omnimodis ecclesiarum substantia in usum ecclesiastico vel ipsorum plebanorum vel aliorum pauperum vel certe saltem ipsius episcopi procurantis ecclesias, monasteria, xenodochia,<sup>4</sup> pauperesque alios, ut ipsis distribuerentur per eum, *prout cuique opus esset*.<sup>5</sup>

#### XL. DE VESTIMENTO MIXTO SANGUINE

Nam de militia, quam exinde augent episcopi vel eorum clerici ultra modum ditati, quid dicam? Num quidnam regalis eorum pompa censenda est esse *purpura regis iuncta canalibus*?<sup>6</sup> Hoc fortasse ipsi putant, sed verius estimatur esse *vestimentum mixtum sanguine* quod iudicante propheta *erit in combustionem* quia *omnis violenta praedatio cum tumulto et vestimentum mixtum sanguine erit in combustionem*<sup>7</sup> et *cibus ignis*,<sup>8</sup> eo quod non facile potest emundari a mixtura sanguinis. Huiusmodi vestis maxime ubi sit quod dictum est in Apocalypsi *ut qui in sordibus est sordescat adhuc et qui nocet noceat adhuc*.<sup>9</sup> Etenim si is qui in sordibus est vere penitens nollet ultra sordescere et qui nocet amplius nocere caveret, vestimentum licet mixtum sanguine cibus ignis (141) minime fieret, sed iuxta doctrinam prophete querentibus iudicium, subvenientibus oppresso, defendentibus viduum, quiescentibus agere perverse, discentibus benefacere, auferentibus malum cogitationum suarum ab oculis Domini, *si essent peccata eorum ut coccinum qui color est rubeus sanguineus quasi nix dealbarentur*.<sup>10</sup> Hec autem sacrilegiis antiquis in decimarum alienatione commissis adicientes nova sacrilegia, sicut longe sunt quidam eorum a vera penitentia, sic longe sunt a vera indulgentia. Quidam tamen per gratiam Dei, vexatione auditui eorum dante intellectum, discunt et sentiunt, verum esse quod propheta dicit:<sup>11</sup> *Multiplicasti gentes et non magnificasti leticiam*,<sup>12</sup> quia, multiplicata illis militum copia numerosa, incipit ipsa militia simul cum malitia sua esse onerosa. Et tamen tantus est ardor insanie qua res ecclesie student alienare ut quidam licet formidantes infeodare decimas, tamen non formident aliis modis illaqueare illas scilicet vel impignorando, vel sic, nescio quibus artificiis, tolerando, ut laici eas possideant, quoadusque ab ecclesiis alienate in laicas abusiones transeant.

Audivi nuper de quodam episcopo,<sup>13</sup> cuius nomen ad presens taceo, quod predia ecclesie sibi commisse laicis infeodavit, super quibus non infeodandis anathema promulgatum fuit (142) me presente a legato sedis apostolice cardinali Octaviano,<sup>14</sup> tribus episcopis, et multis viris religiosi illi cooperantibus et sermonem huius anathematis confirmantibus extinctis candelis in

<sup>1</sup> 1 Cor. 11: 20 ff.

<sup>2</sup> The Council at Rheims, 1148, can. 10; MANSI, Vol. XXI, col. 716.

<sup>3</sup> 1 John 5: 19.

<sup>4</sup> MS., Xenochia.

<sup>5</sup> Acts 4: 35.

<sup>6</sup> Song of Sol. 7: 5.

<sup>7</sup> Libelli omits "quia omnis . . . in combustionem."

<sup>8</sup> Isa. 9: 5.

<sup>9</sup> Rev. 22: 11.

<sup>10</sup> Isa. 1: 16-18.

<sup>11</sup> Libelli, dixit.

<sup>12</sup> Isa. 9: 3.

<sup>13</sup> From GERHOF's *Com. to Ps. CXXXIII* it is apparent that he here refers to Conrad, bishop of Augsburg.

<sup>14</sup> Octavian first appears in a papal document as cardinal deacon of St. Nicolaus in Carcere Tulliano, 1138, April 9. In 1153, March 30, he appears as cardinal presbyter of St. Cecilia. In papal politics he was the leader of the faction in the college of cardinals which favored the German emperor. On the death of Adrian IV., 1159, he contested the election of Alexander III., receiving the votes of his party. He is reckoned as an anti-pope and known as Victor IV.



signum videlicet, quod esset extinguendus episcopus, qui contra illud anathema faciens laicis prestaret predia ecclesiasticis usibus a suo predecessore collata, etiam ea que tunc episcopus habuit ad mensam suam. Et ecce, ut vulgo dicitur et rei evidentia comprobatur, illa predia ecclesiastica usui ecclesie subtracta et laicis infeodata sunt.

Mundi Roma caput si non ulciscitur illud,  
Que caput orbis erat causa fit ut<sup>1</sup> pereat,<sup>2</sup>

ait quidam, versificando propter improbandum quoddam similiter nefandum nefas. Nos vero, his malis crebrescentibus, non versificando, sed orando, pulsamus ad ostium gratie divine, ut Petrus inter hec dormiens a Domine excitetur, quatinus per illum bene vigilantem sacrilegiis episcoporum simulque clericorum cathedralium de rebus ecclesie milites sibi multiplicantium rationabiliter obvietur, ita ut contenti sint episcopi de solis regalibus antiquitus infeodatos milites et principes conservare in defensionem ecclesie qualemcumque desinantque novos de novis beneficiis multiplicare, maxime de decimis ac ceteris oblationibus ecclesiastico usui collatis, ut fiat secundum verbum Christi dicentis: *Reddite que sunt* (143) *Cesaris Cesari, et que sunt Dei Deo*,<sup>3</sup> dum et Christo servitur de decimis et liberis oblationibus fidelium, et regi sive imperatori de regalibus et imperialibus obsequium persolvitur in consiliis bonis et competentibus auxiliis ecclesie simul et regno utilibus atque ante omnia honori et timori divino competentibus. Petrus enim apostolus dicturus: *Regem honorificate*, premisit: *Deum timete*:<sup>4</sup> ut in omnibus, quibus regem honorificamus vel honorificandum predicamus, *timorem Dei pre oculis habeamus*.<sup>5</sup> Quanto magis in ceteris principibus et laicis honorificandis et ditandis episcopi ceterique spirituales viri, quibus commissa sunt victualia pauperum, pre oculis habere debent illud iudicium tremendum, quo impios arguet Dominus *pro mansuetis terre*.<sup>6</sup> Notandum sane quod pro mansuetis celi qui sunt sancti angeli non arguentur inpii sed pro mansuetis terre dicente iudice: *Esurivi et non dedistis mihi manducare, sitivi et non dedistis mihi bibere* (etc., usque), *quandiu non fecistis uni de minimis meis nec mihi fecistis*.<sup>7</sup> Isti minimi Christi sunt mansueti terre quibus cum subtrahuntur debita stipendia ira divina irritatur super inpios maxime inde inexcusabiles quod episcoporum seu clericorum legem Dei scientium nomine simul et officiis honorificantur et tamen contraria suo nomine suoque honori scienter et sine respectu (144) divini timoris operantur. Verum de his plura loqui ad presens omittimus et tibi, pater Adriane, qui regimen tenes in domo Iacob, talia multa his similia per te considerata relinquimus atque, ut id competentius possis, libellum "*De Consideratione*" ab abbate Claravallense predecessori tuo sancte recordationis Eugenio papae dictatum sic legens considerare curato, quasi optime congruentem sancto apostolatu tuo. Nam cum tu sicut ille homo es sub potestate divina constitutus et regularibus disciplinis exercitatus habens sub te pontifices. Et hoc est miserabile, quod dicis huic: "Vade" et non vadit, et alteri: "Veni"<sup>8</sup> et non venit. Si tamen tu illud dicis, quod antecessores tui dixerunt Innocentius et Eugenius, quibus emittentibus precepta saluberrima in suis conciliis nondum est obedientia exhibita, Deo fortasse ordinante ut quod illi seminaverunt tu meteres et in labores eorum tu introires. In hoc enim verbum verum<sup>9</sup> est, quia *alius est qui seminat, alius qui metet*.<sup>10</sup>

#### XLI. DE INAURIBUS THEREBINTO SUFFODIENDIS

Insuper tibi regimen tenenti, sicut dictum est, in domo Iacob, complaceat exemplum patriarche Iacob qui portatas ad se in aures filiorum et filiarum ad se pertinentium, infodit eas subter therebintum<sup>11</sup> profecto significans hoc facto eos qui a veritate auditum avertentes ad fabu-

<sup>1</sup> MS., et.

<sup>2</sup> The poem from which this couplet is quoted was edited by Wattenbach, *Anzeiger für Kunde der deutschen Vorzeit*, Vol. XX (1873), p. 101. These lines are found also in a poem published in the *N. Archiv*, Vol. VIII, p. 191. Cf. also *N. Archiv*, Vol. XIV, p. 448.

<sup>3</sup> Matt. 22:21.

<sup>5</sup> Rom. 3:18; Ps. 13:3.

<sup>7</sup> Matt. 25:42 ff.

<sup>9</sup> *Libelli*, vestrum.

<sup>11</sup> Gen. 35:4.

<sup>4</sup> 1 Pet. 2:17.

<sup>6</sup> Ps. 75:10; Job 24:4.

<sup>8</sup> Matt. 8:9.

<sup>10</sup> Jn. 4:37 f.

las autem conversi eo acervant sibi magistros prurientes auribus (145) humiliandos esse sub misterium crucis dominice, ut noverint illum sapientiore qui *nichil se scire fatebatur nisi Christum Iesum et hunc crucifixum*<sup>1</sup> quam coacervatos illos magistros de quorum doctrina non fulget ecclesia sed fumant scolae plures in Francia et aliis terris per maxime a duabus caudis ticionum fumigantium, videlicet, Petri Abaiolardi et episcopi Gilliberti.

#### XLII. NOVITATES IN DOCTRINA FILII DEI

Quorum discipuli eorum dictis et scriptis inbuti hominem verbo Dei unitum negant esse filium Dei Deum dicendum nisi accidentali, ut aiunt, connexionem. Item negant divinitatem verbi incarnatam. Dicunt personas divinas et earum proprietates extra substantiam Dei considerandas. Dicunt ipsas proprietates personis forinsecus affixas, unde nec ipsas nec earum unitates dicunt inesse sed adesse divinitati, ipsasque personas etsi divinitate esse vel divinitatem appellari non tamen divinitatem esse fatentur, sed et ipsam divinitatem qua Deum esse affirmant esse Deum negant, eritque secundum eos Deus iam non perfecte simplex si alio est quod est, et aliud ipse est et sic inveniretur aliquid Deo melius hoc scilicet quod conferret ei ut esset Deus. Dicunt in Deo quattuor unitates inter se distinctas, unam unius usque, tres trium proprietatum ut secundum eorum sensum intelligatur in quattuor unitatibus quaternitas non trinitas. Quoniam, inquiunt, paternitas et filiatio (146) et connexio diversa sunt oportet unitates quoque que illis assunt a se invicem esse diversas. Item ait episcopus Gillibertus: Unitates que assunt paternitati et filiationi et connexioni, quibus sunt tria non modo hec praedicata, verum etiam illa de quibus praedicantur, idem pater et filius et spiritus sunt nequaquam potuerunt esse substantie. Item dicunt humanam in Christo naturam summa et immensa Dei gloria non glorificatam. Item, glosantes epistolam ad Philippenses, dicunt nomen quod est super omne nomen non esse datum homini assumpto, ita ut sit Deus nominandus, nisi forte, ut aiunt, per adoptionem, in qua significatione hoc nomen Deus non est super omne nomen. Dicunt soli verbo tunc illud nomen esse datum, cum post resurrectionem et ascensionem assumpti hominis fuit manifestatum id quod ipsi verbo assumpti fuit, unicum patri naturale nomen et eternum. Cuius nominis significatum asserunt ab homine assumpto sic alienum, sicut a corpore intelligentia, et a mente color cum tamen propter persone unitatem dicatur vere coloratus intelligere et intelligens coloratus esse. Dicunt in Christo neque divinitatem incarnatam neque humanitatem deificatam. Item, astruere conantur, hominem esse assumptum in Dei filio, sive in Deo, non in Dei filium sive in Deum, tali versutia verborum negantes hominem assumptum filium (147) Dei esse sive Deum proprie nominandum, utpote sicut estimant sic assumptum, ut sit in Deo quasi unus ex prophetis vel paulo amplius honorandus, non tamquam Deus altissimus adorandus cum de filio Dei etiam secundum quod factus est ei ex semine David, secundum carnem constet apostoli testimonium dicentis, tanto melior angelis effectus quanto differentius prae illis nomen hereditavit. Item adorent eum omnes angeli Dei. In sola quippe assumpta natura melior angelis ipse factor effectus et excelsior celis factus est, in qua et promissiones habuit patris dicentis: *Ego ero illi in patrem, et ipse erit mihi in filium*.<sup>2</sup> Neque enim hoc verbo assumpti sed homini assumendo fuit promissum, quia nomen super omne nomen, scilicet, Deus quod verbum eternaliter habuit, homini assumendo ipsa sui in Deum Dei filium assumptione conferendum fuit ex testimonio prophetarum et nunc esse collatum constat ex testimonio apostolorum. Item dicunt patris et filii et spiritus sancti divinitatem esse singularem, quo dicto favent Sabellio, et tres personas tres habere unitates, quo dicto favent Arrio; in neutro assentientes catholice fidei trinitatem in unitate non in singularitate veneranti contra Sabellium et trium non tres unitates sed unam unitatem asserenti adversus Arrium. Cum enim (148) filius dicat ego et pater unum sumus per "unum" Arrius, per "sumus" confutatur Sabellius. Per utrumque instruitur catholicus ut nec singularitatem admittat ubi audit

<sup>1</sup> 1 Cor. 2:2.

<sup>2</sup> 1 Chron. 22:10. Heb. 1:5.

"sumus" nec plures unitates ubi audit "unum" sed credat per "sumus" verbum substantivum substantivas exprimi personas, per "unum" prohiberi ne substantias plures intelligamus nos qui trinitatem in unitate et unitatem in trinitate venerandam praedicamus.

Item, de eternitate Dei Gillibertus in Boetium dicit inter cetera: Cum semper esse dicitur Deus quod usia semper eternitate intelligitur eternitatis cum temporibus hoc sensu facta collatio. Idem, sicut est una et singularis et individua et simplex et solitaria essentia qua eternus ipse fuit, est, erit Deus, ita est una et singularis et individua et simplex et solitaria mora qua vocatur eternitas qua Deus ipse fuit, est et erit eternus. Ipse namque et est et Deus et est eternus, sed est et est Deus essentia, est vero eternus mora. Non sic orthodoxi distinguunt inter Dei essentiam et eius eternitatem sicut iste novus et recens recentis Dei repertor et assertor. Unde ad huius recentis Dei, repulsam libenter audimus frequentari canticum istud in domo Iacob. *Israel, si me audieris non erit in te deus recens neque adorabis deum alienum.*<sup>1</sup> Dominus enim qui colitur in domo Iacob non ita est compositus ut aliud sit ipse, aliud quod est in ipso sed quod in ipso est hoc ipse est. Verbi gratia, (149) bonitas, iusticia, eternitas in ipso est et ipse est ipsa bonitas, iusticia, eternitas, qua bonus et eternus est. Unde Hylarius in libro VIII:<sup>2</sup> "*Deus, inquit, immense virtutis vivens potestas, que nusquam non assit, nec desit usquam, se omnem per sua edocet, et sua non aliud quam se esse significat; ut ubi sua insint ipse esse intelligatur.*" Non aliud autem sunt quam quod est ipse que sua sunt. Idem, in eodem:<sup>3</sup> "*Non humano modo ex compositis est Deus, ut in eo aliud sit quod ab eo habetur, et aliud sit ipse qui habet; sed totum, quod est, vita est.*" Secundum hec dicta Hilarii sic Deus habet sapientiam, iusticiam eternitatem ut sit quod habet, sapientia videlicet, iusticia, eternitas, et cetera, in hunc modum que in Deo non sunt multa sed unum. Et quidem hic sensus patet in sapientia et iusticia seu bonitate ac ceteris, quarum nomina in homine qualitativa, in Deo intelliguntur substantiva, quoniam in summa natura nihil differt sive dicatur iusta sive iusticia, sive dicatur bona sive bonitas, idemque in ceteris intelligitur, que Deo sunt naturalia et essentialia, immo cum dicantur multa una sunt essentia. Eternitas autem sic intellecta sicut in praemissa glosa descripta est ab essentia Dei tam videtur aliena cum sit mora quedam sempiterna sicut ab hominis essentia mora etatis eius aliena est. Non sic intellexerunt eternitatem (150) in Deo patres antiqui veri Dei cultores et praedicatores in domo Iacob. Audi quid dicat Augustinus de trinitate: "*Cum aliquis homo dicatur corpus et rationalis homo non uno modo vel una consideratione hec tria dicuntur. Secundum aliud enim corpus et secundum aliud rationale est et singulum horum non est totum quod homo. Illa vero summa essentia, summa vita, summa iusticia, summa sapientia, summa magnitudo, summa eternitas, et alia similiter quaecumque, sunt in vocabulis multiplicia non plura significant,<sup>4</sup> sed unum.* Nota in his dictis eternitatem inter cetera essentialia nominata a beato Augustino. Idem, in libro Confessionum: "*O eterna veritas et vera caritas et cara eternitas, tu es Deus meus.*"<sup>5</sup> Nequaquam iste sanctus eternitatem Deum suum diceret si eam divinam substantiam non esse intelliget. Gregorius in V. libro moralium:<sup>6</sup> "*Quisquis iam aliquid de contemplatione eternitatis apprehenderit hanc per coeterna[m]<sup>7</sup> eius speciem conspicit.*" Item:<sup>8</sup> "*Nimirum mens cum in contemplationis sublimitate suspenditur, quidquid perfecte conspicere praevallet, Deus non est; cum vero subtile aliquid conspicit, hoc est quod de incomprehensibili substantia eternitatis audit.*" Secundum hec dicta patrum substantiam eternitatis veneremur in Deo nostro abdicantes moram eternitatis que falso attribuitur Deo quam sicut auctor ait, nostrum nunc quasi currens facit sempiternitatem eius ab initio (152)<sup>9</sup> temporis usque protractionis ad finem mora extenditur. Divinum nunc vero permanens neque movens sese atque consistens eternitatem facit, ait Boetius, nos autem expressius dicimus quia tale nunc eternitas ipsa est qua

<sup>1</sup> MS. d. r. n. a. d. a.; Ps. 80:10.

<sup>2</sup> Book VIII, par. 24; MIGNE, Vol. X, col. 255.

<sup>3</sup> Book VIII, par. 43; MIGNE, Vol. X, col. 269.

<sup>4</sup> MS., significant.

<sup>5</sup> ST. AUGUSTINE'S *Confessions*, Bk. VII, 10 (16).

<sup>6</sup> Gregorius I, *Libri Moralium sive Expositio in librum beati Job*, Book V, par. 63.

<sup>7</sup> MS., coeterna.

<sup>8</sup> See note 6, par. 66.

<sup>9</sup> The number 151 was omitted by the one who affixed numbers to the pages of the MS.



et Deus eternus et que Deus eternus est. Cui eternitati omnino simplici qui moram attribuit sensum Boetii non elucidat, sed obscurat, cum ille sane fidei homo scriptis Augustini, ut ipse fatetur, eruditus eidem nusquam reperiatur contrarius. Patet vero in praemissis Augustini verbis quem sensum beatus ille habuerit et docuerit de divina eternitate, quam nullatenus distinguit ab ipsa divinitate, quoniam ut ipse affirmat in Deo summa essentia, summa vita, summa eternitas, unum sunt. Igitur cum de Deo dicitur: Semper est, de homine vero heri venit, non eternitatis ad tempus, sed tocus ad partem collatio est, quoniam Deus qui in eternitate sua non habet praeteritum seu futurum, sed tamen praesentialiter esse absque omnis morae protractione, ipse idem in omni temporalitatis nostre praeterito fuit, praesenti est, futuro erit quod est ei semper esse, si tamen, ut auctor ait, divinum illud tempus semper dici potest. De praedicamento<sup>1</sup> enim quando tractans et hoc Deo vel homini forinsecus assignans nusquam nominat eternitatem ne putes infinitatis cum re finem seu principium, seu etiam utrumque habente ullam esse collationem. Dicit autem sanctus Hilarius (153) in libro II: "*Infinitas in eterno species in imagine usus in munere.*"<sup>2</sup> Si ergo eternus est pater, eterna etiam imago patris filius, eternum quoque munus utrumque, spiritus sanctus, consequens est, ut trinus Deus omnino sit infinitus ac proinde nulli rei temporalitatis aut localitatis terminis incluse conferendus utpote substantialiter eternus, quemadmodum substantialiter est infinitus et immensus. Nam quicquid ad se dicitur Deus ut omnipotens, eternus, immensus, infinitus, immortalis, incomprehensibilis, ad essentiam eius pertinet qua unum est, quomodo relativa nomina signant proprietatum differentiam qua trinus est. Unde auctor, facta est, inquit, trinitatis numerositas in eo quod est praedicatio relationis, servato vero unitas in eo quod est indifferentia vel substantie vel operationis vel omnino eius que secundum se dicitur praedicationis. Ita igitur substantia continet unitatem, relatio multiplicat trinitatem. Hec Boetio dicente praedicatio eternitatis de Deo patre, filio, ac spiritu sancto, cum singulus eorum secundum se dicitur eternus, et tamen non tres est sed unus est, potius ad essentiam qua unum sunt quam ad proprietatum differentiam qua tres sunt, referenda est, et ideo Deum illum recentem cui eternitas asseritur non esse substantialis recipere differimus donec audiamus quid inde censeat successor Petri cui non caro et sanguis per argumenta philosophica, sed pater celestis occulta inspiratione (154) revelavit quid inter adversa vel diversa sentientes approbet vel improbet.

#### XLIII. DE ACCIDENTALI CONNEXIONE

Item, cum proponitur homo est Deus, vel Deus est passus accidentaliter est, inquit, ista connexio, eo quod praedicamentum non secundum causam redditur subiecto quia non tamen Deus unde homo vel inde passus unde Deus quemadmodum cum dicitur corpus esse rationale vel rationale corporeum accidentaliter est connexio, quia videlicet praedicatum non proprie vel ex causa convenit subiecto. Et nos quidem si de homine vel Deo agatur absolute sine respectu alicuius persone, cum proponitur homo est Deus, vel Deus est passus, propositio indefinita verum vel falsum significans, ad utrumlibet se habet et quodammodo accidentaliter dici potest, quia invenitur et homo Deus et homo non Deus. Item invenitur Deus passus, filius scilicet, et Deus non passus, pater scilicet. Verum si definite Homo quem pater sanctificavit et misit in mundum supponatur, et hic Deus esse asseratur tam naturalis est ista connexio acsi proponas de Petro quod sit homo vel de homine quod sit animal. Item si definite hunc Deum et Dominum glorie affirmes crucifixum, Dei filium scilicet, incarnatum, passum sub Pontio Pilato tam conveniens est connexio qua Deus passus asseritur, quam illa qua Paulus dicitur mortuus, cum nec in Paulo humanitas, nec in Deo divinitas mortua sit, quando vel Paulus secundum solum corpus, vel Deus item secundum solum corpus mortem subiit; que intelligitur corporis et anime separatio, tam in homine Deo quam in homine non Deo. Unde huiusmodi connexiones cum de Christo agitur accidentales dicere licet, ut aiunt, magistraliter dici possit, novitas doctrine videtur, apostolica discretionem utrum ne sit profana unacum ceteris que nova nunc dicun-

<sup>1</sup> MS., praecamento.

<sup>2</sup> MIGNE. Vol. X. col. 51.

tur, ventilanda, et aut roboranda si bonum, aut cassanda, si male dicuntur. Quod ipsum de ipsis quoque meis dictis censeo servandum quia ego neque adversarios meos neque me ipsum iudico. Qui autem in celis iudicat me Dominus est, qui super terram iudicat me Romanus pontifex est. Et ego divino simul et apostolico iudicio me meaque scripta seu dicta ita submitto, ut si aliud, quod absit, evangelizavero praeter quod apostolicis documentis congruit, documentum meum anathema sit. Sic etiam nova documenta glosis in apostolum et Boetium a magistro Gilliberto inserta credimus ventilanda et suffodienda subter therebintum. Therebintus denique arbor resinam generans preciosissimam, lignum crucis, quod virtutis est optime, significat subter quam in aures totius domus Iacob sepeliuntur, ut eorum nullum ultra vestigium (156) reperiat. In aures enim tunc in domo Iacob non solum femine, sed viri more orientalium populorum habebant, quod mollis et effeminati animi erat instrumentum. Significant autem inanes false doctrine faleras eloquentia nitidas et fulgidas sed sensu veritatis vacuas. Quibus omnibus et quod stultum est Dei invenitur sapientius<sup>1</sup> et quod infirmum fortius. *Nos enim*, ait apostolus, *praedicamus Christum crucifixum, Iudeis quidem scandalum, gentibus autem stulticiam, ipsis autem vocatis, Iudeis atque Grecis, Christum Dei virtutem, et Dei sapientiam.*<sup>2</sup> Nos autem frustra sed pro re necessarias divinitus suggestum est beato Iacob ut in aures totius domus sue therebinto suffoderet quando interfecto a filiis suis filio Emor principis terre compulsus est a Sichem fugere in Bethel. Nam antehac ipse timidus adoraverat Esau, et tunc interfecto Sichem, timuit se suosque omnes interfici in ultionem principis interfecti et omnium illius civitatis masculorum. Sepultis vero inauribus et diis alienis de domo sua eiectis terror Domini invasit omnes per circuitum civitatis et non sunt ausi persequi recedentes.<sup>3</sup> Forsitan et in diebus nostris doctrinis variis et peregrinis de medio ecclesie ablatis et dampnatis, hostibus ecclesie terror incucietur, et Romanus (157) pontifex vel alter Iacob nunc fugiens eosdem hostes, maxime cives Romanos ipsis humiliatis habitabit secure in Bethel, quod<sup>4</sup> interpretatur domus Dei.<sup>5</sup> Suffosis enim iam dictis inauribus venit Iacob in Bethel, ipse et omnis populus cum eo, edificavitque ibi altare appellavitque nomen loci illius Domus Dei.

## XLIV. DE LEGISTIS

Possunt quoque haut absurde surdis ad legem Dei auribus et ad leges Iustiniani patulis ac pruritu magno estuantibus in aures, quas amant quasque decenter in forensi conventu ostentant, in domo Iacob denegari, ubi decentius iudicatur secundum legem Dei quam secundum legem Iustiniani vel Theodosii, quorum tamen leges non improbamus, nisi forte alicubi discordent a divine legis constitutionibus, verum in domo Iacob simplex narratio et sincerum iudicium secundum consuetudines antiquorum pontificum Romanorum perornat ipsam domum, si lex Domini inreprehensibilis presideat in ea, tamquam domina gentium princeps provinciarum, qua dominante et regnante in domo Iacob lex forensis iudicii vel ancilla subserviat per contemptibiles ad maiora minus idoneos amministrata, sicut apostolus consulit, ne maiores qui orationi et ministerio verbi cum apostolis vacare<sup>6</sup> (158) debent, nimium secularibus negociis implicentur et per hec utiliora suffocentur. Iudices enim tam seculares quam spiritales in ecclesia Dei sufficienter ad diremptionem litium constituendos exemplis Moysi<sup>7</sup> et monitis apostoli docemur, ut sit cuique liberum pro causarum qualitate nunc ecclesiasticum nunc forense iudicium expetere, ut, si non perfectionis amore vult sua contempnere, in hoc saltem valeat pulsato parcere sueque innocentie lucra etiam cum dampno lucri terreni augmentare, si non apud iniquos et infideles forenses illum exponit forte cruciandum, forte spoliandum per iudicem cinctum, sed potius trahens illum ad ecclesiasticos iudices geminum lucrum consequatur et in emendatione fratris et in suis rehatitis absque vindicta sanguinis, quam non debet inferre iudex qui virgam tantum, non etiam gladium portat. Concordat his que dicimus Leo papa suis decretis, capitulo XXII<sup>mo</sup> dicens: "*Aliud quidem est debita iusta reposcere, aliud propria perfectionis amore contempnere. Sed illiciti-*

<sup>1</sup> 1 Cor. 1:25.<sup>2</sup> 1 Cor. 1:23.<sup>3</sup> Gen. 28:11 ff.; cf. ISIDORI, *Etymologiae*, Bk. XV, par. 1.<sup>4</sup> Gen. 34 and 35.<sup>5</sup> *Libelli*, qui.<sup>6</sup> Acts 6:1-6.<sup>7</sup> Deut. 16:18.



torum veniam postulantem oportet etiam licitis abstinere dicente apostolo: *'Omnia licent, sed non omnia expediunt.'*<sup>1</sup> Unde si penitentes habent causam quam negligere forte non debeant, melius expetit quis ecclesiasticum quam forense iudicium."<sup>2</sup> Hec dicendo (159) sanctus Leo papa ostendit satis, non solum forense, sed etiam ecclesiasticum iudicium ad hoc in ecclesia Dei constitutum et suo tempore fuisse utrumque usitatum, ut in utrolibet servata distinctione lites dissolverentur, non tamen ipsa iudicia confusione Babilonica miscerentur et in quoddam neutrum verterentur, sed in ecclesiastico legibus divinis institutis canonum consuetudinibus bonis virga directionis moveretur per manum iudicis non cincti et in forensi legibus imperialibus gladius moveretur ad vindictam<sup>3</sup> malefactorum laudem vero bonorum<sup>4</sup> per iudicem cinctum, sed quia tales aliquando, ut Iacobus apostolus ait, *opprimunt et ipsi trahunt pauperes ad iudicia,*<sup>5</sup> salubris est consuetudo in ecclesia, ut apostolus audiatur dicens: *Audet aliquis vestrum habens negotium iudicari apud iniquos et non apud sanctos?*<sup>6</sup> atque ut ipse monet coram sanctis et spiritualibus<sup>7</sup> interdum tractentur negotia etiam civilia non inopportune garritu legistarum, sed censura legum divinarum terminanda. Esset tamen utcumque tolerabile, si fidelibus et bonis legistis ad aliquam causam discutiendam a iudice spiritali advocatis, discussiones ille fierent seorsum et ad ipsum differretur et deferretur (160) finale iudicium de sententiis legistarum sive concordantium sive discordantium, ut ipse velut alter Adam videret quid vocaret eam,<sup>8</sup> que a legistis essent usque in finem discussa. Sic etiam papam Eugenium vidimus aliquando fecisse, cum haberet secum peritos legis humane, quibus in absentia sua negotia ventilantibus ipse tandem ea consummavit iudiciis finalibus. Aliquotiens tamen idem<sup>9</sup> legiste permissi ante ipsum strepitu clamor[oso] et artificioso causas involvere sic eas intricaverunt, ut vix poterit vel ipse vel cardinalium quisquam eas dissolvere, meliusque tunc fuisset illas cinomias domui Pharaonis<sup>10</sup> inmissas in domum Iacob non fuisse intromissas, maxime regnante Christo in domo Iacob in eternum.

XLV. DE RANIS ET CINIFIBUS ET CINOMIAS

Non enim erraverunt patres orthodoxi qui exponentes decem plagas Egypti ranas in luto coaxantes poetarum loquacitati (s)ciniphes rostro acuto ledentes mundanorum philosophorum subtilitati, cynomias muscas caninas causicorum forensium mordacitati coaptaverunt, ac proinde in conventibus ecclesiasticis eos non admiserunt, ne si invicem morderent et commederent ab invicem consumerentur et per hoc iudicia ecclesie confunderentur. Unde rationabilis apparet emulatio virorum (161) religiosorum super hoc dolentium quod ranis et ciniphibus a domo Iacob segregatis adhuc sustinetur in ea cinomiarum tanta inopportunitas, ut quotiens psallitur *misit in eos cinomiam et commedit eos* cogantur gemere de his que fiunt in medio eorum que fieri decuit solummodo in medio Egyptiorum *in campo Taneos*,<sup>11</sup> in terra Cham, filii Noe cuius posteritas maledicta legitur, et ideo non mirum de terra Cham, terra scilicet Egyptiorum, filiorum Cham, sic esse scriptum. *Edidit terra eorum ranas in penetralibus regum ipsorum. Dixit et venit cenomia et ciniphes in omnibus finibus eorum.*<sup>12</sup> Optamus ergo ut has plagas ceterasque his consimiles auferat Dominus a terra sancta que data est in possessionem Iacob, cui benedixit Dominus commutans nomen eius Israel vocaretur et ad praevalendum contra homines Dei visione confortaretur. Si, inquit, contra Deum fortis fuisti quanto magis contra homines praevalebis?<sup>13</sup> Cuius ergo fortitudo est in Domino utique non indiget causicorum forensium verbositate adjuvari ad causas dirimendas, ad quam illum satis adjuvat legis divine auctoritas dummodo vel alter Moyses recipiat et teneat consilium Ietro,<sup>14</sup> soceri Moysi, tales iudices in cooperationem sui ministri statuendo quales ille consulit sub Moyse ordinandos,

<sup>1</sup> 1 Cor. 6:12.

<sup>2</sup> Leo I., 440-61; cf. Epistola 167, ad Rusticum, Inquis. X; MIGNE, Pat. Lat., Vol. LIV, col. 1206; HINSCHIUS, Decretales, p. 617.

<sup>3</sup> MS. vindicta.

<sup>4</sup> 1 Pet. 2:14.

<sup>5</sup> Jas. 2:6.

<sup>7</sup> 1 Cor. 6:4.

<sup>9</sup> Libelli, tandem for tamen idem.

<sup>10</sup> Ex. 8:28.

<sup>12</sup> Ps. 104:30 f.

<sup>6</sup> 1 Cor. 6:1.

<sup>8</sup> Gen. 2:19.

<sup>11</sup> Ps. 77:12, 43.

<sup>13</sup> Gen. 32:28.

<sup>14</sup> Cf. Exod. 18.



qui videlicet Deum timeant, diligant iusticiam, oderint avariciam. Talium numerus in domo Iacob sufficienter multiplicatus et lege divina (162) instructus non indiget a causidicis forensibus instrui qui potius ab illo sunt instruendi. Diximus quod sentimus de causidicis forensibus discretionem apostolicam, humiliter suggerendo quod domui Iacob decorum putamus, parati sane in talibus, etsi non libenter, attamen pacienter sustinere quod sustinet dominus domus.

## XLVI. DE RECENTE DEO

In his vero novitatum doctrinis que Deum recentem introducendo apostolicam ac sane fidei adversari videntur inanes chaldaico igne conflate et malleo Babilonico fabricate notantur, et ideo minime in domo Iacob sufferende putantur, cui dictum est Israel, *Si me audieris non erit in te deus recens neque adorabis deum alienum*.<sup>1</sup> Deus enim qualem illi describunt recens et alienus videtur nobis parvulis qui ab incunabilis lactati uberibus matris ecclesie, non ita didicimus Christum sicut eum isti docent. Unde nec audemus temere in doctrina fidei subtilitates dialecticas et interdum hereticas admittere contra illius consilium qui dicit: *Videte ne quis vos decipiat per philosophiam et inanem fallaciam secundum elementa mundi secundum traditionem hominum, et non secundum Iesum Christum*.<sup>2</sup>

Tu, ergo, Papa Adriane, aurium prurientium vana oblectamenta, et ornamenta eatenus inaudita partim superius a nobis perstricta, partim (163) sapientiorum diligentie ad investigandum servata in glosis prænотatis, vel alter Iacob sub therebinto<sup>3</sup> crucis fortiter et alte suffodiendo et dicendo: Si quis hoc vel hoc dixerit, quod sane doctrine adversari deprehensum fuerit, anathema sit, comparabis gloriam tibi, contra hostes victoriam. *Quia enim misericordiam et veritatem diligit Deus, gratiam et gloriam dabit* <sup>4</sup> *Dominus*<sup>5</sup> misericordiam tenentibus et veritatem defendentibus. Attinet autem ad misericordiam errantes corrigere ad veritatem, vero in scriptis argute loquentium sola maledicta dampnare ac benedicta servare. Non enim est hoc tuum qui iudicas omnem terram, *ut vel perdas iustum cum impio*,<sup>6</sup> vel dampnes veritatem cum mendatio. Sic in scriptis Origenis<sup>7</sup> male dicta sunt confutata et benedicta servata. Nos vero interim, donec super his iudicium procedat apostolicum, tenemus consilium apostolicum, *omnia probando, quod bonum est tenendo, et ab omni specie mala*,<sup>8</sup> quantum gratia divina dignabitur iuvare, *nos abstinendo*<sup>8</sup> et eos qui nos audiunt in id ipsum commonendo.

## XLVII. COMMEMORATIO PRÆTERITORUM LABORUM

Cum essem iunior cingebam me et ambulabam ubi volebam,<sup>9</sup> visitando aliquotiens apostolorum<sup>10</sup> limina et apostolicam sedem,<sup>11</sup> non tam habens interdum specialem necessitatem quam intendens ecclesie utilitatem communem, super quam et auribus apostolicam (164) discretionis aliqua suggessi, que utilia putavi, propter que *in itineribus* sepi laboravi, *periculis fluminum, periculis latronum, periculis ex genere, periculis in civitate, periculis in solitudine, periculis in falsis doctrinis et falsorum fratrum*<sup>12</sup> infestationibus *foris pugnans, intus timores*<sup>13</sup> excitantibus. Inter huiusmodi pericula Dominus gratia sua astitit michi et sancta Romana ecclesia. Hinc est, quod Petro Leonis in urbe, tyrannizante atque cum esset excommunicatus ipse suique fautores, missas tamen celebrarent et ego illos negassem<sup>14</sup> in scismate<sup>15</sup> sub excommunicatione corpus Christi habere aut conficere posse cum grandi labore meo cogebar sententie, quam tenui et teneo, palam victorie coram beate memorie Innocentio papa optinere. Item contra doctrinas varias et peregrinas Petri Baiolardi auxilium meum a domino in sede apostolica, quamquam ille discipulos

<sup>1</sup> Ps. 80:10.<sup>2</sup> Col. 2:8.<sup>3</sup> Cf. Gen. 35.<sup>11</sup> Ms., sede.<sup>12</sup> 2 Cor. 11:26.<sup>13</sup> 2 Cor. 7:5.<sup>4</sup> Ms. d. d. Libelli, [dabit] Dominus Deus.<sup>5</sup> Ps. 84:12.<sup>6</sup> Gen. 18:23.<sup>7</sup> Origen died 240.<sup>8</sup> 1 Thess. 5:21 f.<sup>9</sup> Cf. John 21:18.<sup>10</sup> Libelli, apostolicorum.<sup>14</sup> GERHOF treats of this question in his letter to Innocent II; cf. MIGNE, 193, cols. 1375 ff. Libelli, III, 203 ff., especially 221 ff.<sup>15</sup> Libelli, crismate.

in scola sua eruditos et doctrine sue consentaneos habuisset tunc in ecclesia Romana, sicut et nunc in ea sunt qui ab episcopo Gilliberto instructi, fortasse nollent aliquid contra illum dici, sed tamen, ut spero,<sup>1</sup> etiam contra ipsum favebunt veritati. Similiter et pro causis aliis nichilominus ecclesiasticis multum laboravi et favente gratia Dei (165) ac Romanorum pontificum sepe optinui quod volui.

XLVIII. EXCUSATIO LABORUM DEINCEPS

Nunc autem quia senectute pariterque infirmitate corporis ita gravor, ut ultra non valeam sicut ante valui laborare, optans cum beato Iob, ut *in nidulo meo moriar*,<sup>2</sup> *derident*<sup>3</sup> quoque me ut illum iuniores tempore, quorum non dignabar patres ponere cum canibus gregis mei,<sup>4</sup> ait sanctus Iob. Et ego patres ac doctores istorum, licet magistros in scolasticis conventiculis, minime preferendos vel conferendos censeo ecclesiarum doctoribus orthodoxis, quorum doctrina fulget ecclesia ut sol et luna. Unde quotiens inter ecclesiastica et scolastica documenta contrarietatem audio, ego magis ecclesiasticis quam scolasticis fidem habeo. Et quia debilis iam corpore non valeo per me ipsum, saltem per literas inde quedam insinuare curo illi, ad cuius pertinet officium confirmare fratres et confirmare hostes, ut *porte inferi non prevaleant*<sup>5</sup> in diebus nostris adversus ecclesiam Petro commissam, in petra fundatam, Petri fide roboratam.

<sup>1</sup> *Libelli*, spiritu.

<sup>2</sup> MS. *moria*; *Libelli*, *mori*.

<sup>3</sup> Job 29:18.

<sup>4</sup> Job 30:1.

<sup>5</sup> Matt. 16:18.

THE MEDICINE-MAN AND THE PROFESSIONAL  
OCCUPATIONS





## THE RELATION OF THE MEDICINE-MAN TO THE ORIGIN OF THE PROFESSIONAL OCCUPATIONS

W. I. THOMAS

IN the last volume of his *Synthetic Philosophy* (*Principles of Sociology*, Vol. III, pp. 179-324, "Professional Institutions") Mr. Herbert Spencer has made an attempt to work out a special application of his ghost theory of the origin of worship, in the thesis that the medicine-man is the source and origin of the learned and artistic occupations. This is a very fascinating theory and has in it elements of truth and of verisimilitude, but it is very far from affording a true view either of the place of the medicine-man in the development of society or of the origins of the occupations. It does not, indeed, seem probable that Spencer would have made this elaborate and somewhat strained effort to give the medicine-man a pre-eminent place in the development of the occupations if he had not been in a way committed to this course by his defective theory of the origin of worship in attention to dead ancestors. But having settled upon his theory, Spencer in these chapters pushes to the limit his habit of selecting the evidence favorable to his theory and omitting or brushing away the unfavorable evidence. Moreover, he has here resorted to a device which I believe he has not before used to any extent, that of giving evidence of an indeterminate character and claiming that "by implication" it is favorable to his argument. But after these detractions we must, as usual, admit that Spencer has opened up a new field of investigation and has treated it in a most suggestive manner. With a view to determining the amount of truth in the conclusions of Spencer, I will examine his statements in approximately the order they are made; and I will at the same time present some evidence, both from the sources used by Spencer and from other sources, tending to establish a different view of the relation of the medicine-man to the occupations.

The following preliminary statement of Spencer's general standpoint should be given first of all, in order that the bearing of his particular claims may be well understood:

Recognizing the general truth, variously illustrated in the preceding parts of this work, that all social structures result from specializations of a relatively homogeneous mass, our first inquiry must be—in which part of such mass do professional institutions originate? Stated in a definite form, the reply is that traces of the professional agencies, or some of them, arise in the primitive politico-ecclesiastical agency; and that as fast as this becomes divided into the political and ecclesiastical the ecclesiastical more especially carries with it the germs of the professional, and eventually develops them. Remembering that in the earliest social groups there is temporary chieftainship in time of war, and that where war is frequent the chieftainship becomes permanent; remembering that efficient co-operation in war requires subordination to him, and that when his chieftainship becomes established such subordination, though mainly limited to war-times, shows itself at other times and favors social co-operation; remembering

that when under his leadership his tribe subjugates other tribes he begins to be propitiated by them, while he is more and more admired and obeyed by his own tribe; remembering that in virtue of the universal ghost theory the power he is supposed to exercise after death is even greater than the power he displayed during life — we understand how it happens that ministrations to him after death, like in kind to those received by him during life, are maintained and often increased. . . . Laudations are uttered before him while he is alive, and the like or greater laudations when he is dead. Dancing, at first a spontaneous expression of joy in his presence, becomes a ceremonial observance on occasions of worshipping his ghost. And of course it is the same with the accompanying music: instrumental or vocal, it is performed before the natural ruler and the supernatural ruler. Obviously, then, if any of these actions and agencies common to political loyalty and divine worship have characters akin to certain professional actions and agencies, these last named must be considered as having double roots in the politico-ecclesiastical agency. It is also obvious that if, along with increasing differentiation of these twin agencies, the ecclesiastical develops more imposingly and widely, partly because the supposed superhuman being to which it ministers continually increases in ascribed power, and partly because worship of him, instead of being limited to one place, spreads to many places, these professional actions and agencies will develop more especially in connection with it. . . . And naturally the agencies of which laudatory orations, hymnal poetry, dramatized triumphs, as well as sculptured and painted representations in dedicated buildings, are products, will develop in connection chiefly with those who permanently minister to the apotheosized rulers — the priests. . . . A further reason why the professions thus implied, and others not included among them, such as those of the lawyer and the teacher, have an ecclesiastical origin is that the priest-class comes of necessity to be distinguished above other classes by knowledge and intellectual capacity. His cunning, skill, and acquaintance with the nature of things give the primitive priest or medicine-man influence over his fellows; and those traits continue to be distinctive of him when, in later stages, his priestly character becomes distinct. His power as priest is augmented by those feats and products which exceed the ability of the people to achieve or understand; and he is therefore under a constant stimulus to acquire the superior culture and mental powers needed for those activities which we class as professional. Once more there is the often-recognized fact that the priest-class, supplied by other classes with the means of living, becomes, by implication, a leisured class. Not called upon to work for subsistence, its members are able to devote time and energy to that intellectual labor and discipline which are required for professional occupations as distinguished from other occupations.<sup>1</sup>

It will be seen that two different classes of callings, laudatory and scientific, are assumed to have their origin in attention to rulers, either living or dead, and that, according to Spencer's view, attentions and services to dead rulers are so much more important than attention and services to living rulers that the occupations representing these attentions and services are developed by the representatives of the dead rather than of the living. On the contrary, we shall see reason to doubt that the professional occupations originated or developed exclusively in connection with either living or dead rulers, and that, in so far as their development and origin were connected with rulers at all, the court hanger-on played a more important part than the medicine-man.

When we come to consider the professions separately we find that the profession of medicine is largely in the hands of the medicine-man to begin with, and we naturally

<sup>1</sup> *Principles of Sociology*, Vol. III, pp. 181 ff.



assume that he is the sole practitioner, and that he is the forerunner of the physician, if of any representative of the professional occupations. But, while it is true that the medicine-man is in a way a physician, he has not a monopoly of medical practice in his tribe, and he does not practice in all branches of medicine, nor is it apparent that he has conspicuously led the way in the development of a science of medicine. His function is, in fact, a limited one. He is concerned with the practice of magic, and works almost wholly by suggestive means. He relieves pain by pretending to have charmed out or sucked out the *causa nocens*; he brings ill upon other people, and he ascertains by suggestive means who is responsible for the death of a native, or pretends to do so. Alongside the medicine-man there are often lay practitioners, both men and women, who rely more on drugs and surgery than the medicine-man, and who are more in the line of scientific medical practice than the medicine-man himself. This condition of things is very well illustrated among the Araucanians, who

have three kinds of physicians, the *ampives*, the *vileus*, and the *machis*. The *ampives*, a word equivalent to empirics, are the best. They employ in their cures only simples, are skilful herbalists, and have some very good ideas of the pulse, and other diagnostics. The *vileus* correspond to the regular physicians. Their principal theory is that all contagious disorders proceed from insects. . . . The *machis* are a superstitious class that are to be met with among all the savage nations of both continents. They maintain that all serious disorders proceed from witchcraft, and pretend to cure them by supernatural means, for which reason they are employed in desperate cases, when the exertions of the *ampives* or *vileus* are ineffectual. . . . They have besides these other kinds of professors of medicine. The first, who may be styled surgeons, are skilful in replacing dislocations, in repairing fractures, and in curing wounds and ulcers; they are called *gutarve*.<sup>2</sup>

Of the Tasmanians, one of the most primitive of all ethnological groups, Bonwick reports that they had various remedies. They relieved inflammation and assuaged the pains of rheumatism by bleeding; pain in the head or stomach was relieved by tight and wet bandages; the *Mesembryanthemum*, or pig-face, and other herbs were used as purgatives; a bath in salt water, or the application of ashes to the skin, was the prescription for cutaneous diseases; drinking copiously of cold water and then lying by the fire was used to promote perspiration; alum was used variously; shampooing, especially with the utterance of favorite charms, was held efficacious in various disorders; cold water was sprinkled on the body in fevers; a decoction of certain leaves was applied to relieve pain; ashes were used for syphilitic sores, and the oil of the mutton-bird for rheumatism; blood was staunched in severe wounds by clay and leaves, while women constantly poured water over the part; leaves of the *Ziera* (stink-weed) were worn around the head to relieve pain; massage was in use; and, on the magical side, various charms and incantations.<sup>3</sup> Among the Hottentots, according to Kolben, there is in every kraal a physician, and in the large ones two, skilled in the botany, surgery, and medicine of the tribe, and chosen by election out of the sages of

<sup>2</sup> THOMPSON, *Alcedo's Geographical and Historical Dict. of America*, Vol. I, p. 414.

<sup>3</sup> BONWICK, *Daily Life of the Tasmanians*, p. 89.

each kraal to look after the health of the inhabitants. They practice without reward, and keep their preparations very secret. There are also several old women in every kraal who pretend to great skill in the virtues of roots and herbs. These are mortally hated by the doctors.<sup>4</sup> There is also a cattle doctor in every kraal.<sup>5</sup> In Madagascar also there was a popular medicine developed, in connection with which, indeed, the sorcerers played a large part, but the knowledge of the virtues of plants was shared and used by the people in general. They collected the leaves, bark, flowers, and seeds of various plants, several kinds of moss, and grass, tobacco, and capsicum, and understood correctly the aperient, cathartic, diuretic, tonic, and sedative qualities of these.<sup>6</sup>

While not losing sight, then, of the fact that among the groups lowest in culture the medicine-man played the most important rôle of all in medicine, we find here a rude medicine, much of it entirely independent of magic, participated in by both lay men and women, and derived from the experience of the group as a whole, not through the activities of the medicine-men in particular. And when in the somewhat higher stages of culture we find the medical art more developed and specialized, we certainly do not find that it is the medicine-man or priest who has specialized in this direction, but someone who, unlike the priest, did not have a paying specialty already. Thus in ancient Peru, as Garcilasso de la Vega reports, purges and bleedings were prescribed by those most experienced, who were "generally old women and great herbalists." The herbalists had a great reputation, knew the use of many herbs, and taught their knowledge to their children. "These physicians were not employed to cure anyone but only the king, the royal family, the curacas, and their relatives. The common people had to cure each other from what they had heard concerning the remedies."<sup>7</sup> In Mexico also medicine was found in a surprisingly advanced stage, and to some degree specialized, partly by women, but more especially by a class of men who were not of the priestly class. The Mexican physicians, according to Clavigero, communicated to Dr. Hernandez the knowledge of 1,200 plants, with their proper Mexican names, more than 200 species of birds, and a large number of quadrupeds, reptiles, fish, insects, and minerals. "Europe has been obliged to the physicians of Mexico for tobacco, American balsam, gum copal, liquid amber, sarsaparilla, tecamaca, jalap, barley, and the purgative pine-seeds, and other samples which have been much used in medicine."<sup>8</sup> "Blood-letting, an operation which their physicians performed with great dexterity and safety with the lancets of Itztli, was extremely common among the Mexicans, and other nations of Anahuac;"<sup>9</sup> and Herrera says that the physicians of Guazacualco were for the most part women.<sup>10</sup> The existing evidence in ancient Peru

<sup>4</sup> KOLBEN, *Present State of the Cape of Good Hope*, Vol. I, p. 87.

<sup>5</sup> *Ibid.*, p. 180.

<sup>6</sup> ELLIS, *History of Madagascar*, Vol. I, p. 222.

<sup>7</sup> GARCILASSO DE LA VEGA, *First Part of the Royal Commentaries of the Yncas*, translated by MARKHAM, Book II, chap. 24.

<sup>8</sup> CLAVIGERO, *The History of Mexico*, translated by CULLEN, Book VII, chap. 59.

<sup>9</sup> *Ibid.*, chap. 61.

<sup>10</sup> HERRERA, *The General History of the Vast Continent and Islands of America*, translated by STEPHENS, Vol. IV, p. 127.

and Mexico indicates that medical practice was still associated with sorcery and superstitious ceremonies, as we should expect to find it (in view of the belief that diseases were spirit-caused), but there had at the same time grown up a body of empirical knowledge, in the hands of specialists, tending to displace the practices of the medicine-man. We may note also that the same state of things existed in Assyria and Babylonia, countries not unlike Mexico in their general condition of culture:

The doctor had long been an institution in Assyria and Babylonia. It is true that the great bulk of the people had recourse to religious charms and ceremonies when they were ill, and ascribed their sickness to possession by demons instead of to natural causes. But there was a continually increasing number of the educated who looked for aid in their maladies rather to the physician with his medicines than to the sorcerer or priest with his charms.<sup>11</sup>

The assumption of Spencer in connection with evidence such as the last given, that the doctors had arisen as one division of the priestly class, seems unwarranted. The medicine-man and the priest<sup>12</sup> relied almost wholly, as had been said, on suggestion, and before the development of a knowledge of drugs and surgery medicine was almost altogether on the suggestive basis. With the natural development of knowledge, however, in a growing society, the priest, if for no other reason, because there were some limitations to the objects of his attention, continued to work on the suggestive basis, while there arose rival schools of medicine, operating on scientific or empirical principles. It must be noticed also that the priest had never had much prominence in surgery, because this is not favorable to the use of suggestion. Instead, therefore, of contributing conspicuously to the development of a scientific medicine, the medicine-man and priest retained a precarious hold on medical practice until entirely displaced by lay specialists, who relied more on drugs and surgery than on suggestion.

In his treatment of the dancer and musician Spencer shows that music and dancing accompany strong emotion, and were used particularly after victory by those welcoming the warriors home. He also shows that a special class was developed, sometimes women, sometimes men, to dance and sing before chiefs and rulers, and to express admiration and praise for these as well as to amuse them. This proposition is quite true, but it is a far cry from this to the conclusion that the medicine-men, who sang and danced in connection with religious observances, rather than the people in general or the court hangers-on in particular, became differentiated into professional musicians and dancers. There is, in fact, scarcely a shred of evidence to indicate that the priestly class was conspicuously associated in early times with the development of music and dancing. The evidence is all to the contrary. The professionals were plainly not medicine-men, but a class of court hangers-on, corresponding to the troubadours and the troupes of strolling players of early times in Europe, while spontaneous expressions continued to be manifested by the populace in general.

<sup>11</sup> SAYCE, *Social Life Among the Assyrians and Babylonians*, p. 98.

a more advanced stage, although the correctness of this standpoint is questionable.

<sup>12</sup> The priest is here considered as the medicine-man in



A few examples will illustrate sufficiently the nature of early spontaneous and professional music and dancing and the character of the participants. In 1 Sam. 18: 6, 7, we read: "And it came to pass as they came, when David was returned from the slaughter of the Philistine, that the women came out of all cities of Israel, singing and dancing to meet king Saul, with tabrets, with joy, and with instruments of music. And the women answered one another as they played, and said, 'Saul hath slain his thousands, and David his ten thousands.'" Somewhat more organized, but still essentially spontaneous, are the dances of the North American Indians. The Iroquois, according to Morgan, had thirty-two distinct dances, and to each a separate object and history was attached as well as a different degree of popular favor. Some were war dances, some costume dances; some designed exclusively for females, others for warriors; but the greater part of them were open to all of both sexes who desired to participate. Both the dancing and the singing were revivals or repetitions of the various activities of the group, particularly of the emotional crises of the group or individual life.<sup>13</sup> In Africa, where despotic forms of government flourish, and a consequent patronage of the arts, we find professional musicians and dancers. These either attach themselves to some court or wander from place to place. A chief usually keeps two or three of them, who sing his praises and those of his white visitors. These singers also attach themselves temporarily to any great man and praise his wit and exploits. But in case the expected presents are not given or are not satisfactory, they then go to the villages round about and retract all they had previously said of their "protectors." They do a prosperous business, and their wives have more beads, it is said, than the chief's wife. In spite of this they are considered disreputable, and are not allowed the rite of burial, but their bodies are placed upright in a hollow tree and allowed to rot.<sup>14</sup> Further evidence cited by Spencer shows the importance of the court in encouraging the professional musician and dancer:

Schweinfurth records that at the court of King Munza, the Monbutto ruler, there were professional musicians, ballad-singers, and dancers, whose function it was to glorify and please the king. And in Dahomy, according to Burton, "the bards are of both sexes, and the women dwell in the palace . . . ; the king keeps a whole troupe of these laureates. . . ." In processions in Ashantee, "each noble is attended by his flatterers, who proclaim, in boisterous songs, the 'strong names' of their master;" and on the Gold coast "every chief has a hornblower and a special air of his own." Similarly we learn from Park that among the Mandingos there are minstrels who "sing extempore songs in honor of their chief men, or any other persons who are willing to give 'solid pudding for empty praise.'" <sup>15</sup>

Without multiplying instances from the lower races, we may say that the evidence all goes to show that the patronage of the rich is important or essential to the development of specialists in music and dancing. Following his usual method at this point — that is, the one corresponding with his ghost theory of the origin of worship — Spencer attempts to show that the praised when living became also the praised when dead,

<sup>13</sup> MORGAN, *League of the Iroquois*, p. 261.

<sup>15</sup> SPENCER, *loc. cit.*, p. 204.

<sup>14</sup> WALLASCHKE, *Primitive Music*, p. 66.

and that the praise of the dead became the office of those concerned with the dead, namely, the medicine-men or priests, and that music and dancing were further developed by this class. "Since it was the function of the minstrel now to glorify his chief, and now to glorify his chief's ancestors, we see that in the one capacity he lauded the living potentate, and in the other capacity he lauded the deceased potentate as a priest lauds a diety."<sup>16</sup> But the evidence does not hold out very far along this line. All that can reasonably be claimed is that the church in many places became a very powerful agency, and consequently a powerful patron, and that the offices of the church were promoted in a great degree by music, and in a very slight degree by dancing, and that churchmen, having leisure, taste, and the stimulation to do so, made important contributions, especially in Europe, to the development of music—but not more important than we should expect in view of the importance of music as a piece of church machinery. That the professional musician is a product of attention to the dead rather than the living is a baseless contention, and that the professional dancer is a church product is perhaps the slenderest claim that Spencer anywhere makes on our imagination.

In connection with his view of the relation of the priestly class to the development of poets, orators, dramatists, and actors, Spencer says:

Ovations, now to the living king and now to the dead king, while taking saltatory and musical forms, took also verbal forms, originally spontaneous and irregular, but presently studied and measured: whence, first, the unrhythmical speech of the orator, which under higher emotional excitement grew into the rhythmical speech of the priest-poet, chanting verses—verses that finally became established hymns of praise. Meanwhile from accompanying rude imitation of the hero's acts, performed now by one and now by several, grew dramatic representations, which, little by little elaborated, fell under the regulations of a chief actor, who prefigured the playwright. And out of these germs, all pertaining to worship, came eventually the various professions of poets, actors, dramatists, and the subdivisions of these.<sup>17</sup>

In this relation, as constantly in his whole discussion, Spencer seeks a more remote and complex explanation when there is a simpler one at hand. Races so low in the scale of organization that they have no political rulers both make and recite and act poems and dramas; and if this is not connected with "living potentates," it is much the more not connected with "dead potentates." It is perhaps true that there is not a lower race in existence today than the central Australians, and yet among them Mr. Baldwin Spencer and Mr. F. J. Gillen were present on the occasion of one of the gatherings in connection with the initiation of the young men, commencing in the middle of September and lasting until the middle of the following January, during which time there was a constant succession of essentially dramatic ceremonies, not a day passing without one, while there were sometimes as many as five or six during the twenty-four hours. These ceremonies or *quabara* related to the wanderings of the alcheringa, or mythical ancestors of the tribe; each ceremony was the property of some individual who either made it himself or inherited it from someone—

<sup>16</sup> *Ibid.*, p. 212.

<sup>17</sup> *Ibid.*, p. 318.

generally a father or elder brother—and it could be acted only by his permission.<sup>18</sup> A single instance will suffice to illustrate the crude but dramatic character of these performances:

[The men] were supposed to represent two eagle-hawks quarreling over a piece of flesh, which was represented by the downy mass in one man's mouth. At first they remained squatting on their shields, moving their arms up and down, and still continuing this action, which was supposed to represent the flapping of wings, they jumped off the shields, and with their bodies bent up and arms extended and flapping, began circling round each other as if each were afraid of coming to close quarters. Then they stopped and moved a step or two at a time, first to one side and then to the other, until finally they came to close quarters and began fighting with their heads for the possession of the piece of meat. . . . The attacking man at length seized with his teeth the piece of meat and wrenched it out of the other man's mouth. The acting in this ceremony was especially good, the actions and movements of the birds being admirably represented, and the whole scene with the decorated men in front and the group of interested natives in the background was by no means devoid of picturesqueness.<sup>19</sup>

It is well known also that the North American Indians produced some very tender poems of love and sentiment;<sup>20</sup> and there are several delicate nature poems in the poetry of the Eskimo. Neither does the prose literature of the natural races show the influence of the medicine-man which Spencer alleges; Mr. Ellis's chapters on the proverbs, fables, and folklore of the Africans of the Slave Coast show no signs of connection with the medicine-man. The stories remind us sometimes of the stories of Uncle Remus and sometimes of Grimm's fairy-tales:

The fables in vogue amongst the Ewe-speaking people, and of which there are a great number, are always material, and in no way connected with metaphor. They are tales pure and simple, are not designed to account for events or phenomena in nature or life, and have no analogy with the moral fables which were once popular in Europe, and of which those of Æsop afford an ensample. They are merely stories of the adventures of beasts and birds, to whom the Ewe-speaking native ascribes a power of speech, and whose moral nature he conceives to be at least as analogous to that of man as their physical nature. . . . The fables are usually recounted on moonlight nights, when the young people of the town or village gather together in one of the open spaces amongst the houses. It is usual for the story-teller to be accompanied by the sound of a drum, whose rhythm occurs after each sentence.<sup>21</sup>

There is, in fact, almost no end to the instances of poetry and drama and literature under conditions which preclude the assumption that they were produced by priests or directed toward great men. But in connection with literature, as with music and dancing, we find that wherever court life and consequently court patronage existed professional poets and actors were developed. These naturally sang the praises of their patrons, but they were, for the most part, laymen, and not priests, and their art celebrated the living, and not the dead. The ancient kingdoms of Mexico and Peru represent highly developed political and ecclesiastical control, but the literature of

<sup>18</sup> SPENCER AND GILLEN, *The Native Tribes of Central Australia*, p. 272.

<sup>19</sup> *Ibid.*, p. 296.

<sup>20</sup> Cf. BRINTON, *Essays of an Americanist*, *passim*.

<sup>21</sup> ELLIS, *The Ewe-speaking Peoples of the Slave Coast of West Africa*, p. 268.



these countries does not show marked priestly influences. Of the ancient Nahuatl poetry Brinton says:

The profession of poet stood in highest honor. It was the custom before the Conquest for every town, every ruler, and every person of importance to maintain a company of singers and dancers, paying them fixed salaries, and the early writer, Duran, tells us that this custom continued in his own time, long after the Conquest. . . . In the training of these artists their patrons took a deep personal interest, and were not at all tolerant of neglected duties. We are told that the chief selected the song which was to be sung and the tune by which it was to be accompanied; and did any one of the choir sing falsely, a drummer beat out of time, or a dancer strike an incorrect attitude, the unfortunate artist was instantly called forth, placed in bonds and summarily executed the next morning.<sup>22</sup>

The antiquary Boturini, writing about two centuries after the Conquest, classified all the ancient Nahauatl songs under two heads, those treating mainly of historical subjects, and those of a fictitious, emotional, or imaginative character.<sup>23</sup>

About the same state of literature is reported by Garcilasso among the Peruvians:

The *Amautas*, who were philosophers, were not wanting in ability to compose comedies and tragedies, which were represented before their kings on solemn festivals, and before the lords of their court. The actors were not common people, but Yncas and noblemen, sons of Curacas, or the Curacas themselves, down to masters of the camp. For the subject-matter of the tragedy should, it was considered, be properly represented, as it always related to military deeds, triumphs, and victories, or to the grandeur of former kings and other heroic men. The arguments of the comedies were on agriculture and familiar household subjects. . . . They did not allow improper or vile farces. . . . They understood the composition of long and short verses, with the right number of syllables in each. Their love songs were composed in this way, with different tunes. . . . They also recorded the deeds of their kings in verse, and those of other famous Yncas and Curacas. . . . They did not use rhymes in the verses, but all were blank. . . . Other verses are on the subject of astrology; and the Ynca poets treated of the secondary causes, by means of which God acts in the region of the air, to cause lightning and thunder, hail, snow, and rain.<sup>24</sup>

We find, indeed, some signs of priestly influence and of remembrance of the dead in the poems of these two countries, but the relation between patron and court attendant is so plain, and the nature of the poetic subjects treated so varied, as to preclude the theory that the ecclesiastic is the dominant influence.

After confessing in this connection that among various groups, notably some African tribes and the nomads of Asia, "eulogies of the living ruler, whether or not with rhythmical words and musical utterance, are but little or not at all accompanied by eulogies of the apotheosized ruler," Spencer passes on to some of the higher stages of development, and shows that among the Egyptians, Greeks, and Christians the arts in question were practiced by the priesthood. And all that he claims may be admitted, or at any rate there is no occasion to question the evidence that the priests were concerned with the production of poetry and literature; for here, as in the case of music, the church availed itself of all the modes of suggestion and all the emotional helps

<sup>22</sup> *Ancient Nahuatl Poetry*, p. 9.

<sup>24</sup> GARCILASSO DE LA VEGA, *op. cit.*, Book II, chap. 27.

<sup>23</sup> *Ibid.*, p. 13.

within its reach. It is a mistake to assume, however, that this development in the church was later in point of time or more important than the corresponding development in the world. The true statement seems to be that these forms of art developed naturally both in the world and in the church, as answering to the needs of human nature; and the church may be regarded as a microcosm, reproducing in small the activities of the world, or at any rate those activities essential to its own maintenance. A passage in Clavigero illustrates that priests did *various* things, *some of them artistic*, contributing to the up-keep of the church:

All the offices of religion were divided among the priests. Some were the sacrificers, others the diviners; some were the composers of hymns, others those who sung. Amongst the singers some sang at certain hours of the day, others sang at certain hours of the night. Some priests had the charge of keeping the temple clean, some took care of the ornaments of the altars; to others belonged the instructing of youth, the correcting of the calendar, the ordering of festivals, and the care of mythological paintings.<sup>25</sup>

The church is here a patron of the arts, and the arts flourish under patronage. Under certain conditions, particularly with the dominance of theocratic ideas, the church may become a more powerful patron than the court or the world at large. The reflective, speculative, and artistic interests of society may even become identified to a large degree with the church and be fostered by it, while the motor activities are appropriated by the court and the world at large. In mediæval and feudal Europe the church became a temporal power, and in consequence a very powerful patron; and it did appropriate and represent certain characteristic mental interests, owing to peculiar conditions in the world at large. Among these interests were reading and writing. And, as Spencer points out, many churchmen were contributors to poetry; and the church developed also a body of dramatic literature of very slight artistic value. But to say nothing of the fact that churchmen alone were able to read and write, and that consequently their productions had the best chance to survive, the array of names of churchmen connected with literature in England which Spencer presents is not at all impressive, and is besides useless, since on his haphazard principle of selection it could equally well be shown that no literature has been created in England at all, except by lawyers, or that all poets have blue eyes.

In his treatment of the beginnings of painting, sculpture, and architecture, Spencer has singled out a slight and, so to speak, incidental connection which these arts have with spirit belief and the medicine-man, and has greatly overstated its importance:

Unquestionably . . . pictorial art in its first stages was occupied with sacred subjects, and the priest, when not himself the executant, was the director of the executants.<sup>26</sup>

A rude carved or model image of a man placed on his grave gave origin to the sculptured representation of the god inclosed in his temple. A product of priestly skill at the outset, it continued in some cases to be such among early civilized peoples; and always thereafter, when executed by an artisan, conformed to priestly direction. Extending presently to the representation of other than divine and semi-divine personages, it eventually thus passed into its secularized form.<sup>27</sup>

<sup>25</sup> CLAVIGERO, *op. cit.*, Book VI, chap. 15.

<sup>27</sup> *Ibid.*, p. 320.

<sup>26</sup> SPENCER, *op. cit.*, p. 306.

The art [of architecture] was first used either for the preservation of the dead or as ancillary to ceremonies in honor of the apotheosized dead. In either case the implication is that architecture in these simple beginnings fulfilled the ideas of the primitive medicine-men, or priests. Some director there must have been; and we can scarcely help concluding that he was at once the specially skilful man and the man who was supposed to be in communication with the departed spirits to be honored.<sup>28</sup>

These are among the conclusions which Spencer says "leap to the eyes;" but in this neither the lay reader nor the student of these matters will probably agree with him. The interest in reviving in consciousness the emotional aspects of past activity, which we have seen in the arts of poetry and music, is common also to painting and sculpture. Spencer was familiar with the etchings and carvings of the prehistoric cave-men, and it is difficult to conceive that he counted these records of hunting activity and interests among the products of the medicine-man. There are, besides, among the natural races of today, particularly among the Australians and Africans, numerous rock carvings and paintings. Among the Bushmen are found thousands of animal forms, often twenty on a single stone. They use in the painting a lively red, brown ochre, yellow, and black, and occasionally green. The subjects are men and animals. One especially fine piece<sup>29</sup> represents a fight between the Bushmen and Kaffirs, in connection with a cattle raid which the former had made on the latter. Art of this character, we may believe, has no especial connection with the medicine-man. The person who scratched on a mammoth's tusk a representation of a vicious-looking mammoth<sup>30</sup> was pretty certainly no medicine-man, but one of the men foremost in the hunt, in whose imagination and memory the picture stuck. The connection which the medicine-man has with the art of sculpture and painting is a secondary one—the manufacture of images of other men to be used magically in bringing disaster on these men. This is essentially a fetichistic practice, and cannot be regarded as having a very far-reaching influence in art. It was as prevalent in the Middle Ages as among savages, and in neither case had a serious influence on art. As to architecture, that this originated in the construction of tombs is a conclusion so far from "leaping to the eyes" that quite the contrary takes place; and we shall not go far astray if we decide that architecture originated in the construction of habitations for the living, rather than tombs for the dead. Even the lower animals, notably the beaver and the bower-bird, have made a beginning in architecture, while making no special provision for the dead. It is, besides, in keeping with Spencer's ghost theory of worship that no attentions to the dead shall be found which are not foreshadowed in attentions to the living, and in accordance with this view we should expect him to claim that the tendency to build imposing structures is to be looked for, as in fact it is, in connection with political centralization and court life. The earliest imposing structures in the way of fortifications and strongholds represent the needs of the living, not

<sup>28</sup> *Ibid.*, p. 286.

<sup>30</sup> Reproduced in LUBBOCK, *Prehistoric Times*, p. 333.

<sup>29</sup> Reproduced in ANDREE, *Ethnographische Parallelen und Vergleiche*, 2d Series, Supplement.



of the dead; the castle precedes the cathedral, and the builder in either case is the result of patronage, not of priestly predisposition. This is by no means denying that the church made particular uses of architecture and that churchmen made notable contributions to it. But in these cases, as in the others, the simplest assumption is the safest, and is sustained by the mass of evidence. As soon as there developed at any point, either at the court or in the church, an amount of wealth making the support of a class of professionals possible, these appeared. This condition is seen first of all in connection with court life, and is very well illustrated in old Mexico:

Netzahualcoyotzin ordered all artists to make his likeness. . . . The goldsmiths made a golden statue, the feather-workers manufactured a portrait so like that it seemed to be living, the painters made another, the sculptors made his statue, and the architects erected a lion . . . which had his figure; even the blacksmiths made their work.<sup>31</sup>

Both the court and the church used the arts for their own glorification, and in some historical periods the church is pre-eminently the patron of the arts; but the arts originated in common consciousness; their connection with church and state is adventitious, and dependent on economic rather than psychological principles.

In explaining the origin of the historian, Spencer says:

The great deeds of the hero-god, recited, chanted or sung, and mimetically rendered, naturally came to be supplemented by details, so growing into accounts of his life; and thus the priest-poet gave origin to the biographer, whose narratives, being extended to less sacred personages, became secularized. Stories of the apotheosized chief or king, joined with stories of his companions and amplified by narratives of accompanying transactions, formed the first histories.<sup>32</sup>

But men in very early times invented means of keeping a record of their activities and of past events, and in this, rather than in the praise of apotheosized chiefs, we find the beginning of history. The Indian wampum is an example of a device of this kind: "The laws explained at different stages of the ceremonial were repeated from strings of wampum, into which they 'had been talked' at the time of their enactment. In the Indian method of expressing the idea, the string or the belt can tell, by means of an interpreter, the exact law or transaction of which it was made at the time the sole evidence."<sup>33</sup> A still simpler device is reported of the Chippewas by Schoolcraft: "A subordinate here handed him, at his request, a bundle of small sticks. 'This,' handing them to me, 'is the number of Leech Lake Chippewas killed by the Sioux since the treaty of Prairie du Chien.' There were 43 sticks."<sup>34</sup> And a more elaborate development than wampum was the *quipu*, or knot-writing, of the ancient Peruvians.<sup>35</sup>

The stimulation to historical and biographical interest is, however, found mainly in connection with great men who are pleased to have themselves and their deeds

<sup>31</sup> IXTLILXOCHITL, *Histoire des Chichimèques*, quoted in SPENCER, *Descriptive Sociology*, Vol. II, p. 68.

<sup>32</sup> SPENCER, *Principles of Sociology*, Vol. III, p. 318.

<sup>33</sup> MORGAN, *League of the Iroquois*, p. 120.

<sup>34</sup> SCHOOLCRAFT, *Expedition to the Sources of the Mississippi River*, p. 251.

<sup>35</sup> TYLOR, *Early History of Mankind*, p. 154.

glorified. Historical writing is consequently developed mainly at the court; the ruler was its object, and out of the hangers-on was developed a class of specialists in this line. The beginnings of this we see very clearly in Africa, where the king of the Zulus kept men who acted as heralds at the dances, and "at every convenient opportunity recounted the various acts and deeds of their august monarch in a string of unbroken sentences;"<sup>36</sup> and among the Dahomans, where on special occasions professional singers, sitting at the king's gate, rehearse the whole history of the country, the recital taking up several days.<sup>37</sup> On the Slave Coast there are "*arokin*, or narrators of the national traditions, several of whom are attached to each king or paramount chief, and who may be regarded as the depositaries of the ancient chronicles. The chief of the *arokin* is a councillor, bearing the title of *Ologbo*, 'one who possesses the old times,' and a proverb says, '*Ologbo* is the father of chroniclers.'" <sup>38</sup> At the stage of culture reached by the ancient Mexicans the profession of historian is already fully developed:

It ought to be known that in all the republics of this country . . . there was, amongst other professions, that of the chroniclers and historians. They possessed a knowledge of the earliest times, and of all things concerning religion, the gods, and their worship. They knew the founders of cities and the early history of their kings and kingdoms. They knew the modes of election and the right of succession; they could tell the number and characters of their ancient kings, their works and memorable achievements, whether good or bad, and whether they had governed well or ill. . . . They knew, in fact, whatever belonged to history, and were able to give an account of all the events of the past. . . . These chroniclers had, likewise, to calculate the days, months, and years; and, though they had no writing like our own, they had their symbols and characters through which they understood everything. . . . There was never a lack of those chroniclers. It was a profession which passed from father to son, highly respected in the whole republic; each historian instructed two or three of his relatives. He made them practice constantly, and they had recourse to him whenever a doubt arose on a point of history. . . . Whenever there was a doubt as to ceremonies, precepts of religion, religious festivals, or anything of importance in the history of the ancient kingdoms, everyone went to the chroniclers to ask for information.<sup>39</sup>

From evidence of this character we find that the original narrator of historical events and personal history was not usually a priest, and in the more advanced stages of development, as shown in the last citation, it does not appear that the historians are from the priestly class. At the same time it is true that the priests had special interest in being in possession of historical knowledge, in order to further their own interests. Bastian reports that

The only kind of history which is found among the Congo people is the traditions of important events, which are secretly transmitted among the fetich-priests, in order, through the knowledge of the past of different families, to make the people who come to them for advice imagine that they possess supernatural knowledge.<sup>40</sup>

<sup>36</sup> GARDINER, *Narrative of a Journey to the Zoolu Country*, p. 65.

<sup>37</sup> DALZEL, *History of Dahomey*, Introd., p. xxii.

<sup>38</sup> ELLIS, *The Yoruba-speaking Peoples of the Slave Coast of West Africa*, p. 243.

<sup>39</sup> LAS CASAS in MÜLLER, *Chips from a German Workshop*, Vol. I, p. 323.

<sup>40</sup> SPENCER, *Descriptive Sociology*, Vol. IV, p. 34, referring to BASTIAN, *Africanische Reisen*, p. 100.

From the same motives of self-interest the church at all times, and perhaps pre-eminently the Christian church in Europe, has used history and created supposed history (to-wit, miracle) both to preserve and to magnify its past. On this account we may well expect to find that when the church is powerful and able, like the court, to support a number of hangers-on, its representatives will have a prominent place in history and in letters; and of course this was particularly true in Europe during the period when the church had a monopoly of learning. But this participation of the clergy in a general activity is quite different from the claim that history is a priestly creation. An interest in the past is common to human nature, and wherever there was an economic surplus applicable to the cultivation of this interest a class of men sprang up who cultivated it. The economic conditions were met primarily by the court and secondarily by the church, and either of these alone would have developed historians and men of letters.

Finally, we may examine together Spencer's claims that the teacher, the philosopher, the judge, and the scientist are of ecclesiastical origin, because there is, perhaps, more, to be said in favor of his theory as applied to these occupations than the others, medicine excepted. Yet Spencer's claim with reference to these is also fundamentally unsound. He says that —

The primitive conception of the teacher is the conception of one who gives instruction in sacred matters. Of course the knowledge thus communicated is first of all communicated by the elder priests to the younger, or rather by the actual priests to those who are to become priests. In many cases, and for a long time, this is the sole teaching. Only in the course of evolution, along with the rise of a secular cultured class, does the teacher as we now conceive him come into existence.<sup>41</sup>

Spencer also alleges that in the initiatory ceremonies of the Australians the youth is dedicated to a god, and that the medicine-men are the operators and instructors during the ceremony. These statements, as they stand, are unquestionably incorrect. The most important evidence bearing on initiatory ceremonies among the Australians, that of Spencer and Gillen, to which reference has been made, had not appeared when Spencer wrote. In this work we have, in fact, the first exhaustive and satisfactory account of these ceremonies, and among the Central Australian tribes, to whom the description is limited, the initiatory ceremonies are a very remarkably well organized and successful attempt to teach the young men the traditions of the tribe and to bring them under the influence and control of the older men. The old men, particularly those distinguished by their superior knowledge and good sense, are the teachers and operators during these ceremonies, one part of which, it will be remembered, lasts about four months. The medicine-men, as such, do not appear at all, but all possible suggestive means are employed, and with an almost endless repetition, to impress the youth with respect for the older men of his tribe and for his alcheringa or mythical ancestors.

<sup>41</sup> *Principles of Sociology*, Vol. III, p. 274.



It may be noted here that the deference paid to the old men during the ceremonies of examining the churinga is most marked; no young man thinks of speaking unless he be first addressed by one of the elder men, and then he listens solemnly to all that the latter tells him. . . . The old man just referred to was especially looked up to as an oknirabata or great instructor, a term which is only applied, as in this case, to men who are not only old, but learned in all the customs and traditions of the tribe, and whose influence is well seen at ceremonies such as the engwura [ fire-ceremony ], where the greatest deference is paid to them. A man may be old, very old indeed, but yet never attain to the rank of oknirabata.<sup>42</sup>

On the other hand, it is remarkable that the only instance of levity recorded by Spencer and Gillen was in connection with the churinga (sacred object) of an oruncha or "devil-man"—one of the three classes of medicine men—"and on the production of this there was, for the first and only time, general though subdued laughter."<sup>43</sup> The medicine-men of the other classes were held in respect, practiced sorcery of various kinds, and in some cases taught their arts to others, but they figured in no way in the general education of the youth. In other parts of Australia some participation of the medicine-man in the ceremonies of initiation is found, but this is slight.

With reference to the other three professions named, that of philosopher, that of judge, and that of scientist, we may say, in brief, that the first form of philosophy is the mythology growing out of the attempt of primitive man to understand such phenomena as echoes, clouds, stars, thunder, wind, shadows, dreams, etc. The creation of a mythology is not the work of the medicine-man alone, but the work of the social mind in general. Among the first forms of science are the number, time, and space conceptions, and a vague body of experiential knowledge growing out of the general activities of the group or the individuals of the group, and essential to the control of these activities and the development of new and more serviceable habits. The first decision of cases was made by old men, and later by men in authority, particularly those to whom pre-eminent ability, particularly in war, gave uncommon authority; and these were first of all rulers rather than priests.

A particular reason, however, for the development of the teacher, the philosopher, the judge, and the scientist within the church is found in the fact that they were peculiarly fitted to further the needs and claims of the church. The medicine-man, as we have seen, operated by means of suggestion, and the church in all times and without interruption has operated on the same basis. The medicine-man claimed that he had connection with spirits, claimed to mediate spirit intervention, and claimed superior knowledge from spirits. The church made all these claims, and hence its knowledge and utterances were regarded as inspired. Aided by this inspirational claim, the church in several quarters of the world grew more powerful than the temporal powers, and developed within itself many special agents. Europe, as is well known, passed through a period of dominance by ecclesiastical forces, and in this period the offices of teacher, philosopher, judge, and scientist were in great part assumed by the church; for inspired teachers and thinkers naturally outclassed

<sup>42</sup> SPENCER AND GILLEN, *op. cit.*, p. 303.

<sup>43</sup> *Ibid.*, p. 326.

uninspired teachers and thinkers. And if we accept the power of the church as a fact in early European history, and have in mind the necessity of patronage to the development of professional life, we are not surprised to find that the functions of thinking, teaching, and judging were specially claimed and developed by the church. But these functions originated in society at large, their emphasis in the church is adventitious (if the assumption of temporal power by the church may itself be called adventitious), and they pass again into the hands of the lay specialist whenever the world at large becomes again a more powerful patron than the church.

The most general explanation of the rise of the professional occupations is that they need patronage; and when either the court or the church is developed the patronage is at hand. With the division of labor incident to a growing society, and the consequent increasing irksomeness of labor, particularly of "hard labor," there are always at hand a large number of men to do the less irksome work. Both the court hanger-on class and the priest class have, under the patronage of the court and of the church, furthered the development of the learned and artistic professions, and some of the professions have received more encouragement than others from the church because their presence favored the needs and claims of the church. But their development must be regarded as a phase of the division of labor, dependent on economic conditions rather than on the presence in society of any particular set of individuals or any peculiar psychic attitude of this set.

# EMPIRE AND SOVEREIGNTY





# EMPIRE AND SOVEREIGNTY

ERNST FREUND

## THE TERM "EMPIRE"

THE term "empire" (or its German equivalent *Reich*) has not attained to the status of an exact political concept, but by international usage has been reserved for political organizations of great power or territorial extent. Down to the beginning of the past century it was used particularly to designate the Holy Roman Empire of the German Nation, the nominal successor of the great empire of antiquity; but the sultan's imperial rank had been recognized<sup>1</sup> in 1718, and the title *imperator* had been assumed by the tsar of Russia in 1721. The rulers of the great eastern nations, China and Japan, have always been designated as "emperors" by European writers, and are accorded that rank in diplomatic intercourse. On the downfall of the Holy Roman Empire the last of its rulers assumed the title of "emperor of Austria," and Napoleon constituted himself "emperor of the French." Brazil became an "empire" in 1822. When monarchical rule was temporarily established in Mexico in 1863, the title of "emperor" was given to the monarch. The reconstitution of Germany took place under the form of an "empire." The queen of England assumed the title of "empress of India" in 1878, and the term "empire" is generally applied to the whole of the British dominions.

It thus appears that we speak of "empire" regularly only in connection with political systems ruled by a monarchical head, and that a territory of considerable extent is regarded as essential, but also as sufficient, to support the rank. A large extent of territory will, however, in most cases mean some diversity in population, and therefore also the grouping of the people of different districts into communities more or less distinct from each other in habits and feelings, if not in law and language. Political consolidation may, in course of time, overcome such differences, as they have been overcome in France, and very largely in Russia, not to speak of China and Japan. But most empires have been forced to preserve this distinctness of communities in their political organization, which then appears as a conglomeration of states rather than as a perfectly consolidated system. The United States presents the first instance of such conglomeration in a successful manner otherwise than under a monarchical head; and because it is a republic, this country is not spoken of as an "empire." The application of the term "empire" to another notable aggregation of states under republican form of government, the Swiss confederation, would be prevented by the small extent of its territory. But both the United States and Switzerland have aided in the solution of problems of imperial organization.

<sup>1</sup> By the peace treaty of Passarowitz. (The title had been assumed in 1453.)

The recent acquisition by the United States of tropical possessions has been designated as an "imperial" policy—partly, it is true, on account of the proposed or apprehended system of absolute or constitutionally unlimited government, which seemed to present an analogy to monarchical rule. The political connection of a dominant state with outlying dependencies has, however, generally been one of the notable features of empire, and bids fair in the future to become its leading characteristic. The extension of European or occidental rule over Asia and Africa is generally recognized as the paramount issue of present world-politics. There is no doubt that, within a measurable period of time, this process of colonial expansion will not result in perfect political amalgamation between dominant and dependent states. The term "empire" will then come more and more to designate systems of political organization falling short of absolute consolidation.

A careful study of this form of imperial organization, applied to national as well as to colonial expansion, will probably lead to a revision of some of the fundamental doctrines of political science, especially that of sovereignty. The ingenuity of political writers has been taxed to fit the theory of the sovereign state to the structure of the federal state; the structure of the British empire presents still greater difficulties. The theory of parliamentary omnipotence does not give a correct or adequate idea of the organic relation between the United Kingdom and its dependencies. While the constitution of France bears out the current theory of the state, that theory fails if we view France and such dependencies as Tunis or Annam as a unit. If it can be shown that these relations are not merely abnormal and temporary, but are serviceable and appropriate forms of organizing an empire, it may still be argued that the totality of an empire is not a state. But it must be conceded that it constitutes a political system of the first importance, and we are called upon to explain the nature and constitution of a political organism, which exhibits normal vitality and adequately performs the function of government, without that consolidation of governmental powers which we call sovereignty.

#### POLITICAL CONNECTIONS IN ANCIENT GREECE

When we say that in ancient Greece the idea of the state was realized only in the city, we recognize not only the fact that Greek national life never attained any adequate political organization, but also that to Greek political thinkers the idea of such an organization did not assume the form of a consolidated state. The abortive steps toward political unity show the possible lines of further development: a united Greece would have been either a permanent symmarchy, like that headed by Athens in the time of Pericles, or a federation like the Achæan, extending over the whole of Greece; that is to say, it would have been a protectorate or a federal state.

For the alliance headed by Athens was distinctly unequal in character, the subordinate members paying tribute, while Athens furnished protection against Persia, secured free navigation on the Ægean sea, and preserved peace between the members,



respecting at the same time their internal autonomy; the Achæan federation, on the other hand, was an alliance of equal members, and a well-organized central authority not only determined foreign relations, but even exercised some legislative powers. There is nothing to show that the Greeks ever contemplated or desired an absolute political consolidation of the country, reducing the city-states to provinces, such as has been realized in modern Greece.

### THE ROMAN EMPIRE

The expansion of Rome assumed partly the form of subjection, partly that of the protectorate. The subjection, as expressed in the ancient formula of the *deditio*, was absolute, and established the Roman *imperium* without any constitutional limitations;<sup>2</sup> it formed the basis of the provincial government, and if local laws and institutions were to some extent respected, this was done for the sake of convenience and by mere sufferance. The term "protectorate" may be used to cover several relations which the Romans distinguished from each other. A state or city that had been conquered might receive its liberty as a gift from the Romans; then it belonged to the class of *civitates sine foedere immunes et liberae*, of which Cicero<sup>3</sup> mentions five in Sicily; the autonomy was established by a charter (*lex*), granted by the senate, or in later times also by the emperor, and was thus less secure than that guaranteed by treaty. Where autonomy was secured by treaty of alliance, the Romans spoke of *civitates foederatae*. The independence of these communities rested upon the sacred law which furnished the sanction of international obligations.<sup>4</sup> The alliance might be equal or it might recognize the superiority of the Romans; in either case the allied state was regarded as free.

A people is free which is subject to no other's power; it is at the same time allied whether it entered into friendship by equal alliance, or whether it was contained in the treaty that it should by comity recognize the suzerainty of another people.<sup>5</sup> For this means that the one people is understood to be superior, not that the other is not free; and as we understand our clients to be free, although they are not equal to us in authority, dignity, or strength, so we understand those to be free who must recognize our overlordship.<sup>6</sup>

The internal autonomy of such states was very extensive; they had their own laws and legislative powers, their own jurisdiction even over Roman citizens, and the administration of their finances; they were not subject to Roman taxation or conscription, but the Romans in some cases stipulated that they should be exempt from customs duties levied by an allied state.<sup>7</sup> A general prohibition of certain associations was held by Emperor Trajan to be unenforceable in a city using under treaty its own laws;<sup>8</sup> and Roman magistrates entered these cities without lictors. Many cities retained their own right of coinage—one of the principal marks of sovereignty—and they could

<sup>2</sup> WALTER, *Römische Rechtsgeschichte*, secs. 78, 96.

<sup>3</sup> *In Verrem*, IV, 6, 13.

<sup>4</sup> *Ibid.*, V, 19.

<sup>5</sup> *Majestatem populi Romani comiter conservato*,

CICERO, *pro Balbo*, 36, calls attention to the imperative form of this provision.

<sup>6</sup> *Digest*, 49, 15:7, 1.

<sup>7</sup> *Liv.*, 38, 44.

<sup>8</sup> *PLIN.*, *Ep.* 10, 93.

receive exiled Roman citizens. The treaty often bound the ally to furnish aid to the Romans, such as troops and ships, and supplies and quarters to Roman troops passing through allied territory. It was always stipulated that the Romans and their allies should have the same friends and enemies. In many cases this liberty was precarious, and would not protect from arbitrary acts of interference; if deemed desirable, it was readily taken away. In fact, the Roman political supremacy was unquestioned and irresistible, but this makes the policy which tolerated legal independence all the more remarkable. To the Roman administrative authorities the boundaries of free states were boundaries of jurisdiction, which might be overstepped by political acts of state, but not by the regular course of legislation or administration. These states, it is true, were not sovereign, but neither did the Roman empire enjoy legal sovereignty over them, since no constitutional organs of Roman government were operative within their limits. Such was the position of Marseilles in France and of a number of Greek cities, at least to the end of the first century of our era; but from the beginning of the empire many free states, especially in Asia and Africa, were brought under immediate Roman jurisdiction, and from the time of Trajan this principle was systematically carried through.<sup>9</sup> Only in the remoter boundary districts, cities and territories in the Crimea, Armenia, the Caucasus, and Arabia retained a qualified independence under rulers who recognized Roman supremacy. On the whole, however, the later Roman empire was thoroughly consolidated, and presented the perfect type of a state which enjoys throughout its territories sovereign authority.

#### THE HOLY ROMAN EMPIRE

Before the final downfall of the western empire a number of Germanic kingdoms sprang up in France and Spain. In a vague and undefined manner they recognized the overlordship of the Roman emperor; but for all practical purposes the Teutonic kingdoms of the early Middle Ages enjoyed a substantial independence very different from the precarious autonomy accorded to the free and allied states before referred to. Their position may be compared to that of the Parthian empire, the one great state that succeeded in holding its own against the Roman world-empire at the height of its power, but whose rulers refrained from exercising the right of gold coinage—the highest badge of sovereignty.<sup>10</sup> It is to be noted that even the early Frankish kings engraved on their coins the name of the Roman emperor. At the time the Theodosian code was published France and Spain were already severed from Rome; but the code was sent to the states in these territories and received currency among their Roman inhabitants by adoption on the part of their Teutonic rulers—a proceeding likewise characteristic of the deference voluntarily paid to the name and authority of the Roman empire.

The Germanic kingdom arose out of the temporary overlordship of the duke over the princes of several nations created for the purpose of undivided leadership in com-

<sup>9</sup> MOMMSEN, *Provinzen*, p. 289.

<sup>10</sup> *Ibid.*, p. 417.

mon wars. For a time this kingship became absolute, and attained its highest power in the hands of Charles the Great, under whose reign all territories subject to him were simple provinces. But the conditions which it had superseded gradually reasserted themselves in the form of feudal suzerainty<sup>11</sup> and vassalage. The characteristic element of feudalism is subordinate territorial power held as vested and heritable right, and therefore adversely to any claim of absolute power on the part of the superior lord.

In Germany the development of feudalism was such that the power of the great vassals in course of time grew into substantial independence, which in the French draft of the peace treaty of Münster and Osnabrück was designated as "sovereignty."<sup>12</sup> On the other hand, the legal supremacy of the empire was not formally surrendered. The imperial legislative power was undefined and not restricted to certain matters; and if so expressed, it prevailed over local customs and statutes of the territories;<sup>13</sup> from a purely theoretical point of view it was therefore sovereign; but the machinery for its exercise was so constituted that the rights of the territorial princes could not be affected without their assent. The legal power was, moreover, neutralized by political impotence which increased as time went on. Political writers were puzzled by the abnormal features of this political organism and did not know quite how to characterize it. German legal historians now designate it as a *Staatensaat*; we may describe it as a federal state in which political strength and consciousness was represented by the members, while the union was weak and decaying, and, so far from expanding at the expense of the members, would not dare to exercise the powers which it had. In law the members had to submit to imperial taxation and to take part in imperial wars; they could not conclude alliances against the empire; they were subject to the supreme judicial control of the imperial court, which, even where regular appellate jurisdiction was excluded, could be invoked against an absolute denial of justice on the part of territorial governments.<sup>14</sup> In many important matters imperial and territorial powers were concurrent. If we look at the relation from the point of view of the practical operation of constitutional law, we should say that sovereignty lay neither with the territory nor with the empire, that the course of historical development had resulted in the lack of an absolute authority, and that neither the position of the states nor that of the empire evinced any definite principle in the adjustment of functions such as is noticeable in our present federal constitutions. The constitution of the Holy Roman Empire had in it the germs of disintegration, but also shows that political life can be carried on for centuries with nominal powers of supremacy held in abeyance, and recognized only upon condition that they will not be asserted.

#### THE FEDERAL STATE

In the course of the past century the old German empire has given way, first, to an even looser federation, the organic act of which was careful to describe the parties entering into it as sovereign, then to a federal state framed upon the model of the

<sup>11</sup> See W. H. H. KELKE, "Feudal Suzerains and Modern Suzerainty," *Law Quarterly Review*, Vol. XII, p. 215.

<sup>12</sup> SCHROEDER, *Deutsche Rechtsgeschichte*, p. 801.

<sup>13</sup> *Ibid.*, p. 750.

<sup>14</sup> *Ibid.*, p. 786.



American Union which had evolved up to that time the most successful and durable form of a constitution, combining local autonomy with national supremacy, and recognizing both as non-delegated, inherent, and indestructible rights. A similar federal constitution had been adopted for Switzerland in 1848. The federal system also prevails over the greater portion of Latin America: Mexico, Central America, Colombia, Venezuela, Brazil, and Argentine. It has, moreover, been adopted by the two greatest dependent communities of the world, British North America and Australia. It thus rules two of the world's greatest powers, and almost the whole of the new world. It was first successfully established by English-speaking people, and now claims the adhesion of their great majority. As the English constitution embodies a most successful compromise of powers within the state, so we turn primarily to a nation of English origin for an answer to the question whether a compromise between different communities cannot be made the permanent basis of a great political organism.

In examining the structure of these federations the two questions, whether they constitute states, and whether they constitute sovereign states, have been frequently and most thoroughly discussed. There is substantial unanimity in answering the first question in the affirmative. There can be, indeed, no doubt that the constitutions of the great federations of the present time must be interpreted as creating distinct and independent political communities and governments, not dependent upon the voluntary consent of the members either for the continuance of their existence or for the enforcement of their laws. The opposite theory has been silenced in America since the Civil War. Direct federal citizenship and allegiance, and what the Supreme Court of the United States has called sovereignty or governmental power "resting upon the soil,"<sup>15</sup> are essential to the distinct existence of a state, and they belong to every federal system.

The prevailing opinion is also that the federal state is sovereign, excepting of course the dependent federations, Canada and Australia. If by "sovereign" we understand merely "supreme," *i. e.*, subject to no higher power, the attribute clearly belongs to the federal organization, and it is, moreover, supreme in the sense that it is superior to the member-state organization.<sup>16</sup> Power may be supreme in this sense without being unlimited; and if we understand by "sovereignty" a power which is formally unlimited,<sup>17</sup> it cannot be admitted that the principal federal states are sovereign over their member-states. This position follows from the following considerations:

1. No federal state has imposed its organization upon the member-states by force or against their will, but in each case the federal constitution was adopted by the free and voluntary act of cohesion on the part of the member-states. The preamble of the German constitution expresses this fact of a prior agreement; the first article of the Swiss constitution implies it by speaking of sovereign cantons, and, while the Swiss constitution was adopted against the dissenting popular vote of a minority of cantons,

<sup>15</sup> *Ex parte Siebold*, 100 U. S., 371.

<sup>16</sup> United States Constitution, VI, 1, 2; German Constitution, Art. 2.

<sup>17</sup> BURGESS, *Political Science and Comparative Consti-*

*tutional Law*, Vol. I, p. 52: "Original absolute unlimited universal power over the individual subject and over all associations of subjects."

it was subsequently accepted by the governments of these cantons. The preamble of the constitution of the United States does not refer to an agreement of the states, but to the sovereign will of the united people or nation; but the constitution provided that, upon its ratification by nine states, it should be established between the states so ratifying the same only;<sup>18</sup> the establishment of the constitution previous to this ratification by all states was thus a revolutionary act in its effect upon the old confederation, which was thereby dissolved; but the constitution was not imposed as an act of force upon unwilling states; each state has voluntarily come into the union. The same is true of the Canadian and Australian federation. That no federation has forced reluctant states into the bond of union is, however, stated merely as a fact of great significance, and not as conclusive against the claims of sovereignty; for it does not prove that the federal constitution may not now be imposed upon new states against their will. The constitution of the United States gives Congress power to admit new states; this is always done by an act of legislation providing for the expression of the will of the people of the state to be admitted; but it does not appear that this is necessary, and it is probable that Porto Rico or Hawaii could be made states of the Union without their consent, and that Alsace-Lorraine could be received as a state into the German empire by legislation operating as a constitutional amendment. The non-exercise of this sovereign power is clearly dictated by principle, if not by absolute rule, and should be contrasted with the organization of counties, provinces, and territories by sovereign act of the state, often without consulting the wishes of the people of the locality concerned, and nearly always without a formal expression of their consent.

2. The member-states cannot be destroyed by federal power. The indestructibility of the states of the American Union has been recognized by the Supreme Court of the United States, even with reference to extra-legal action or causes, such as rebellion or secession;<sup>19</sup> the principle would, however, be even stronger if confined to legislation. It is clear beyond any doubt that legislation under the constitution does not extend to the exercise of such power; the express enumeration of federal legislative powers to be found in the several federal constitutions naturally does not include this subject.<sup>20</sup> But it is also true that in the United States a constitutional amendment could not abolish a state, since that would involve the taking away of its representation in the Senate, which cannot be done without its consent.<sup>21</sup> German jurists likewise hold, with few exceptions, that the imperial power cannot be exercised so as to destroy the existence of any one state without its consent; either on the ground that the preliminary agreements between all the states protect each state in perpetuity,<sup>22</sup> or on the ground of inherent equality.<sup>23</sup> In Switzerland the constitutional recognition of the cantons as sovereign may be relied upon as leading logically to the same result.

<sup>18</sup> Art. VII.

<sup>19</sup> *Texas v. White*, 7 Wall., 700, 1869.

<sup>21</sup> United States Constitution, Art. V.

<sup>20</sup> The constitution of the United States provides expressly that Congress may not form new states by the division or junction of territory of existing states (Art. IV, § 3, 1).

<sup>22</sup> MEYER, *Staatsrecht*, sec. 164.

<sup>23</sup> LABAND, *Staatsrecht*, sec. 13.

3. It may, however, be urged that, while federated member-states cannot be absolutely destroyed, the federal power may be exercised by constitutional amendment so as to strip them of their functions and independent organization and to leave them only a shadow of existence without substance. This must be conceded; but to judge of the practical operation of federal power, the machinery of constitutional amendment must be considered. It is a uniform feature of federal constitutions that their amendment requires the expression of the will of the member-states, and the assent of a substantial part of them; in the United States this must be a three-fourths majority; in Switzerland a simple majority; in Germany fourteen out of fifty-eight votes in the federal council defeat a proposed amendment, and in view of the distribution of votes in the council between the forty-five states it is possible that twelve states may impose an amendment upon thirteen, these twelve, however, representing the vastly greater portion of federal territory and people; it is also true and very important that the small one-vote states by holding together can defeat any encroachment upon their rights; that Prussia can do so by herself, and the three other kingdoms by combining their votes. The clear meaning of these provisions for constitutional amendment is that it was intended to qualify federal sovereignty by a compromise arrangement securing to the states as such an influence upon the formation of the federal will; and the result is certainly something very different from the sovereignty of the consolidated state over its political subdivisions.

4. The determining fact in judging the question of federal sovereignty is, however, that there are in the United States and in Germany matters that are withdrawn even from the power of constitutional amendment; in the United States the right of each state to equal representation in the Senate;<sup>24</sup> in Germany any special right of a member-state.<sup>25</sup> Here is an absolute limitation upon the federal power which can be overcome by no legal process. If sovereignty is power unlimited and absolute, how can it be reconciled with these provisions? Mr. Burgess admits the difficulty, and attempts to remove it by suggesting for the United States that all the great reasons of political science and of jurisprudence would justify the adoption of a new law of amendment by the general course of amendment now existing without the attachment of the exception,<sup>26</sup> while with regard to Germany he urges that in this point there is not only incompleteness, but positive error, in such an organization of the state.<sup>27</sup> Neither argument disproves the existence of the limitation, nor would anyone regard its violation otherwise than as an act unwarranted by law and revolutionary in character. I think it is clear that neither the United States nor the German empire is sovereign in the sense in which the term is defined by Mr. Burgess or by the English school of analytical jurists as represented by Austin or by Professor Dicey.

<sup>24</sup> Art. V: "No state without its consent shall be deprived of its equal suffrage in the Senate."

<sup>25</sup> Art. LXXVIII: "Those provisions of the constitution by which certain rights of member-states in their relation

to the union are established, can be altered only with the consent of the member-state having such right."

<sup>26</sup> *Political Science and Constitutional Law*, Vol. I, p. 154.

<sup>27</sup> *Op. cit.*, Vol. I, p. 164.



## THE AUTONOMOUS COLONY

Canada and Australia, two of the world's great federations, at the same time represent another type of political connection peculiar to the British empire—the autonomous colony. It appears to have been asserted from early times as a principle of English constitutional law that British settlers in new colonies carried with them the fundamental rights and privileges of the British subject.<sup>28</sup> As one of these privileges they claimed the important political right not to be subjected to taxes or laws by the mere exercise of the royal prerogative, but only by the consent of representative assemblies. The principle did not apply to countries conquered by British arms, over which, indeed, the royal power is not absolute—for it is still subordinate to Parliament—but the inhabitants of which may continue to be governed by their former laws which do not make taxing or legislative power dependent upon the consent of representative assemblies. But if the king in such conquered colony erects by charter or otherwise a legislative assembly, he cannot thereafter levy taxes by royal authority.<sup>29</sup> As a matter of right, therefore, in the original British colonies, as a matter of favor in some others, the colonists enjoyed the power of levying their own taxes and making their own laws through elected legislatures, and this no matter whether the colony was governed as a province, or by a patented proprietor, or under a popular charter. The American colonies prior to the War of Independence illustrated the application of these principles. The colony of Botany Bay, later New South Wales, on the other hand, constituted an apparent exception to the rule of self-government, being in the early stages of its history subject to military rule; but at that time the colony had practically no free British settlers; the population consisted of convicts, the garrison, and British officials; and, so far from having any revenues which might have been taxed, the settlement received for a long time regular assistance in supplies from the home government.<sup>30</sup>

The privileges of the British colonists, while they secured them against absolute and arbitrary rule, did not amount to practical independence or freedom from royal control. Such freedom might be substantially granted by corporate or proprietary charter, and was enjoyed by several of the American colonies, but the autonomy of the charter government is *sui generis* and bound up with questions of private right and royal prerogative. In the regular provincial colony the crown, through its representatives, had a voice in legislation and controlled the executive branch of the government. The instructions to the colonial governor, of which those issued to Governor Morris of New Jersey<sup>31</sup> may be taken as an example, show that the royal control over legislation was carefully guarded by rules intended to protect British interests and the royal prerogative and to prevent the growth of undue independence.

Moreover, the checks upon the power of the crown could not be regarded as checks

<sup>28</sup> LORD JOHN RUSSELL in the British House of Commons, February 8, 1850; 108, HANS., *Deb.*, p. 535.

<sup>29</sup> Campbell v. Hall, 20 *St. Tr.* 289; Cowper, 205.

<sup>30</sup> JENKS, *History of the Australasian Colonies*, chap. iii.

<sup>31</sup> Reprinted by Hart, *American History of Contemporaries*, Vol. II, p. 154.

upon the imperial power, unless the privileges of British settlers abroad controlled Parliament as well as the royal prerogative. In the earliest stages of colonial history this difference would have been of little practical importance, since Parliament refused to meddle with the government of the foreign dependencies of the crown,<sup>32</sup> but from the time that the secretaries of state came under the influence of the legislature, the power of Parliament became a factor to be reckoned with by the colonies. The controversy which led to revolution and independence in America turned upon the question of parliamentary and not royal power to levy internal taxes upon the colonies. It should be noted that as early as the fifteenth century it had been held with regard to Ireland, at that time a dependent subordinate kingdom with a parliament of its own, that taxes do not bind those of Ireland because they are not summoned to parliament.<sup>33</sup> During the American crisis even in England grave doubts were entertained as to the constitutional power of Parliament over the colonies in this respect, but upon the repeal of the stamp act Parliament took occasion to declare solemnly that it had full power and authority to make laws and statutes of sufficient force and validity to bind the colonies and people of America, subjects to the crown of Great Britain, in all cases whatsoever.<sup>34</sup> Pitt desired to have an exception made with regard to the right of taxation, but the crown lawyers would not yield the point, and the declaratory act passed without alteration. The exception as to taxes could have referred only to taxes other than customs duties, for protective duties had been imposed since 1672, the net produce being applied to the defense of the colonies, and they continued to be levied until 1845. In 1778 the exception contended for was recognized by Parliament in an act<sup>35</sup> declaring:

The King and Parliament of Great Britain will not impose any duty, tax or assessment whatsoever payable in any of His Majesty's colonies, provinces and plantations in North America or the West Indies except only such duties as it may be expedient to impose for the regulation of commerce, the net produce of such duties to be always paid and applied for the use of the colony, province, or plantation in which the same shall be respectively levied, in such manner as other duties, collected by the authority of the respective general courts or general assemblies of such colonies, are ordinarily paid and applied.

This solemn renunciation must be regarded as the establishment in the strongest available form of a constitutional restraint upon imperial legislative power.

Since the latter part of the eighteenth century, the constitutions of colonies enjoying representative institutions have regularly emanated from Parliament, and not from the crown. Parliament, however, did not depart substantially from the system of government formerly established by royal instruction. This appears from the constitutional act of Canada of 1791 dividing Quebec into Upper and Lower Canada, which provided for the exercise of the legislative power with the consent of an elected

<sup>32</sup>A survival of this old attitude may be found in the fact that the judicial supremacy over dependencies does not lie with the House of Lords, but with the king in council.

<sup>33</sup>Y. B. 20, H. VI., 8, cited Blackstone, I, 101.

<sup>34</sup>6 George VII., chap. 13.

<sup>35</sup>18 George III., chap. 12.

assembly (the franchise being bestowed upon Catholics, which could not have been done by royal charter), and an appointive council of life members who might be made hereditary, the governor having power to assent to bills or to withhold his assent, or to reserve them for the signification of the king's pleasure, and the king in council having power to disallow any bill assented to by the governor within two years from its receipt. The executive power is vested in an appointed governor acting as the representative of the crown. The crown, which is thus the source of the executive power, is, however, the crown of Great Britain and Ireland, and as such subject to the legal and political control of the British Parliament. The executive power will therefore naturally tend to be the representative of the imperial interests or of the interests of Great Britain rather than of those of the colony. If colonial autonomy is to be established, it must be by yielding to the colony a substantial control over the colonial executive. And this was done in a manner most characteristic of British constitutional ideas, in the establishment of what has become known as responsible government.

The Canadian rebellion of 1838 led to Lord Durham's mission to Canada, which resulted in the famous report of 1839.<sup>36</sup> Lord Durham's plan of reform was to strengthen the popular element of government and to reconcile it with the principle of the monarchy by the same methods which had been found efficacious for that purpose in England, *i. e.*, to transplant the peculiar British relation between the crown and Parliament to the colony.

Every purpose of popular control might be combined with every advantage of vesting the immediate choice of advisers in the Crown, were the colonial governor to be instructed to secure the coöperation of the assembly in his policy, by entrusting its administration to such men as could command a majority; and if he were given to understand that he need count on no aid from home in any difference with the assembly that should not directly involve the relations between the mother country and the colony. The governor if he wished to retain advisers not possessing the confidence of the existing assembly might rely upon the effect of an appeal to the people, and if unsuccessful he might be coerced by a refusal of supplies, or his advisers might be terrified by the prospect of impeachment. But there can be no reason for apprehending that either party would enter on a contest when each would find its interests in the maintenance of harmony, and the abuse of powers which each would constitutionally possess would cease when the struggle for larger powers became unnecessary. Nor can I conceive that it would be found impossible or difficult to conduct a colonial government with precisely that limitation of the respective powers which has been so long and so easily maintained in Great Britain.

Lord Durham's plan was adopted by the British government, and the Coercion Act of 1838 was superseded by the Union Act of 1840, which restored normal constitutional relations. In view of the radical change of policy now introduced, the most striking feature of the act of 1840 is the close adherence of its provisions to those of the Constitution Act of 1791. The constitution of the legislature is the same except that membership in the legislative council may no longer be made hereditary; and executive powers are vested as before in the governor alone, or in the governor acting with the advice and consent of, or in conjunction with, the executive council. The

<sup>36</sup> Reprinted in HOUSTON, *Documents Illustrative of the Canadian Constitution*, Toronto, 1891.



letter of the provisions showing no radical departure from the earlier system of government, the new policy must be found in the spirit of their interpretation, and this interpretation is expressed in instructions and other documents of less formal character than acts of parliament or royal charters.

Even before the passage of the act of 1840, in 1839, Lord John Russell instructed Lord Sydenham, the new governor:

The importance of maintaining the utmost possible harmony between the policy of the legislature and of the executive government admits of no question; and it will of course be your anxious endeavor to call to your councils and employ in the public service those persons who, by their position and character, have obtained the general confidence and esteem of the inhabitants of the province.<sup>37</sup>

And another dispatch setting forth his views he concluded by saying:

The governor must only oppose the wishes of the Assembly where the honor of the Crown or the interests of the Empire are deeply concerned; and the Assembly must be ready to modify some of its measures for the sake of harmony, and from a reverent attachment to the authority of Great Britain.<sup>38</sup>

After the Union Act had gone into effect, a number of resolutions were voted by the Legislative Assembly, which contain perhaps the fullest formulation of the new policy, and which may be taken as authoritative, since it is understood that Lord Sydenham himself drafted them, and had them introduced by one of the members of his executive council. They read as follows:

1. That the most important as well as the most undoubted of the political rights of the people of this province is that of having a Provincial Parliament for the protection of their liberties, for the exercise of a constitutional influence over the Executive Departments of the Government, and for legislation upon all matters of internal government.

2. That the head of the Executive Government of the Province being, within the limits of his Government, the representative of the Sovereign, is responsible to the Imperial authority alone; but that, nevertheless, the management of our local affairs can only be conducted by him, by and with the assistance, counsel and information of subordinate officers of the Province.

3. That in order to preserve between the different branches of the Provincial Parliament that harmony which is essential to the peace, welfare and good government of the Province, the chief advisers of the representative of the Sovereign, constituting a provincial administration under him, ought to be men possessed of the confidence of the representatives of the people, thus affording a guarantee that the well understood wishes and interests of the people, which our Gracious Sovereign has declared shall be the rule of the Provincial Government, will, on all occasions, be faithfully represented and advocated.

4. That the people of this Province have moreover a right to expect from such provincial administration the exertion of their endeavors that the Imperial authority, within its constitutional limits, shall be exercised in the manner most consistent with their well understood wishes and interests.<sup>39</sup>

Thus was established the principle of colonial autonomy since transplanted to Australia and the Cape Colony, that in matters of internal government the colonial executive, though an organ of the imperial authority, should be ruled by the popular

<sup>37</sup> HOUSTON, *op. cit.*, p. 299.

<sup>38</sup> *Ibid.*, p. 302.

<sup>39</sup> *Ibid.*, p. 304.

will, this result to be accomplished by the institution of responsible advisers modeled upon the British plan. The principle never received a strictly legal formulation. A number of changes were made in the Union Act of Canada, modifying the constitution of the legislature so as to make it more responsive to the popular will—and it is especially noteworthy that these changes were not made directly by the British Parliament, but under parliamentary enabling acts by the authority of the colonial legislature itself, the principle of autonomy thus being recognized even in the exercise of the constituent powers of government—but the legal powers of the colonial executive remained unaltered.

The British North America Act of 1867 united upon a federal basis the provinces of Canada, Nova Scotia, and New Brunswick into one Dominion, and provided for the eventual admission into the union of Newfoundland, Prince Edward's Island, British Columbia, and of Rupert's Land and the Northwestern Territory. The supplementary British North America Act, 1871, further declared the power of the Dominion to establish provinces out of territory subsequently coming under the control of the Dominion, and to provide for the government of territory united with it not included within any province. Under these provisions Prince Edward's Island, British Columbia, and Manitoba have been admitted as provinces, and the rest of the continental British possessions have been brought under the Dominion as territories, so that New Foundland is the only part of British North America remaining outside of the jurisdiction of the Dominion. The autonomy granted to the province of Canada was preserved and extended in the act creating the Dominion; and it naturally derived additional strength from the greater political power of a great federation.

Since 1850 responsible government has been gradually introduced into the Cape Colony, the Australian continental colonies, and New Zealand. The method of establishment has been everywhere essentially the same, following the precedent of Canada. In 1900 the colonies of the Australian continent were united in the Commonwealth of Australia. In all cases the organic acts have taken the form of statutes of the British Parliament; these, however, regularly contain large powers of amendment to be exercised by the colonial legislature, touching the internal constitution of government. None of the organic acts expresses in unequivocal terms the principle of autonomy; perhaps the statement in the preamble of the British North America Act that the provinces have expressed their desire to be federally united into one dominion under the crown of the United Kingdom of Great Britain and Ireland, with a constitution *similar in principle to that of the United Kingdom*, may be taken to refer to the principle of the parliamentary responsibility of ministers. The wording of the Commonwealth of Australia Constitution Act, 1900, is quite consistent with an interpretation under which the government of Great Britain might exercise concurrent powers with the colonial organs in all legislation, and a controlling influence in all matters of administration. The legislative power is vested in a federal parliament consisting of the queen, a Senate, and a House of Representatives, and the act embodies the tradi-

tional provisions found in the early colonial charters, giving to the governor power to assent to acts, or to withhold his assent, or to reserve the law for the queen's pleasure, and giving to the queen power to disallow any act assented to within a prescribed period after its passage.<sup>40</sup> As to the executive power, it is vested in the queen and exercisable by the governor-general, in specified cases with the advice of an executive council appointed by him. The executive power is to extend to the execution and maintenance of the constitution and of the laws of the commonwealth, but nothing is said as to its exercise subject to the consent of responsible ministers, evidenced by their counter-signature of executive acts or otherwise. It is only provided that ministers must be members of the legislature.<sup>41</sup>

The real and effective restraints upon the executive, and through it upon the imperial power, must therefore be sought elsewhere than in formal statutes. We should first turn to the instructions given to the governor by the home government. Those to the new governor-general of Australia are not yet accessible; but we have those to the governor-general of Canada. Even the formal instructions presuppose rather than specify, and must be supplemented by other sources.

The first instructions issued after the passage of the British North America Act, besides specifying the classes of acts which were to be reserved for the queen's pleasure, provided that, if the governor-general should see sufficient cause for dissenting from the Privy Council, it should be competent to him to execute his powers under his commission and instructions in opposition to their opinion, and they also direct him to exercise the pardoning power on his own deliberate judgment, receiving the advice of the Privy Council, but irrespective of their concurrence.<sup>42</sup> It is natural to interpret this express and qualified power to dissent as implying a general duty to abide by the advice of the Privy Council, and it was of course so understood. But new permanent instructions issued in 1878 not only omitted the specification of bills to be reserved, but were silent with regard to any power to act in opposition to the advice of the council, merely directing that in cases where the exercise of the pardoning power should directly affect the interests of the empire or a country beyond the jurisdiction of the Dominion, the governor-general is to "take those interests especially into his own personal consideration in conjunction with such advice as aforesaid."<sup>43</sup>

The constitutional limitations which must be read into the authoritative acts of the British government are therefore found expressed only in ministerial dispatches, parliamentary speeches, and other documents which cannot be regarded as formally binding, but they have been observed by a continuous practice of half a century, and are generally regarded as securing to the colonies practical independence in their internal affairs.

How, then, are we to define the relation of Great Britain to these colonies and their status in the empire?

<sup>40</sup> Secs. 58, 59.

<sup>41</sup> Secs. 61-64.

<sup>42</sup> HOUSTON, *op. cit.*, p. 248.

<sup>43</sup> *Ibid.*, p. 256.



It is very simple to say that the colonies are in law subject-possessions, and that Parliament has never lost or abated its sovereignty over them. The omnipotence of the British Parliament is a cherished maxim of the English law. But what does this maxim mean? Nothing but this, that if Parliament passes an act the courts will not and cannot question it. But it is a gratuitous and practically untenable assumption that the security of rights rests exclusively and in all cases upon the possibility of judicial enforcement, on the one side, or upon the certainty of judicial recognition, on the other. Neither the British government nor the people of the colonies regard the possible attitude of a court as having any practical bearing upon their internal relations, and the important question in dealing with great powers must be: What are their rights and obligations as understood by them? Of what nature, we must ask, is the restraint under which the British government feels that it acts toward the self-governing colonies? Is it merely a matter of policy that it does not interfere with their internal concerns? Policy, however much guided by principle or conservative in spirit, is essentially free and unaccompanied by a sense of binding obligation, which is the distinguishing characteristic of law. But there is a very marked distinction between the sphere in which the British government feels free to interfere with colonial government, and the sphere in which it feels bound not to interfere. The distinction between policy and obligation was well illustrated in the recent discussions on the Commonwealth of Australia bill. The power of amending the bill presented by the Australian colonies was distinctly claimed as a constitutional right of Parliament as soon as imperial interests were concerned, although it was also admitted to be a dictate of the strongest possible considerations of policy that this power should be most sparingly exercised. But not only would it have been distinctly unconstitutional to regulate internal colonial taxation—this right having been surrendered by Parliament in express terms—but equally unconstitutional to regulate the conditions of popular suffrage or local government, this power, which was formerly exercised, having likewise been tacitly abandoned to colonial autonomy. The precise limits of parliamentary power over colonies cannot be here inquired into; the point to be emphasized now is that limits do exist, and that they rest upon a distinction peculiar to the British system of government, and known to American lawyers only in an altogether different sense—the distinction between law and constitution. In America the constitution is a higher form of law, overriding common and statute law, and like them resting upon judicial recognition and enforcement, the judicial sanction being the ultimate test of the constitution, so that law and constitution can always be brought into harmony with each other. It is quite possible to confine the term “law” to rules and restraints with a judicial sanction, but it is also possible to extend it to rules and restraints beyond the reach of the judicial power, but practically enforced by an adequate sanction of some sort. In the latter sense alone we speak of international law. Now, if within the state we refuse to the restraints resting upon the organic powers of the political community in their relations to each other the name of “law,” because and in so far as

they are not protected by judicial sanction, we must find for them another name, for they are different from either policy or morality, and in Great Britain these restraints go by the name of the "constitution." The constitution is supposed to guide and bind the law, but the law overrides it in the courts of justice. Laws enacted by Parliament may conceivably violate the constitution—and it is not uncommon to hear a law denounced as unconstitutional—or they may alter and develop the constitution, but as a rule they are as conformable to it as acts of Congress are to the constitution of the United States. The constitution is acknowledged as a binding rule by Parliament and upon Parliament, and in the traditions and the constitution and practice of Parliament it finds a sanction practically as effective as that afforded by a supreme court; but the constitution as such has no judicial sanction. It is this constitution which protects the internal autonomy of the colonies, and in judging their status this constitution is of greater importance than the technical law of the courts. Under this constitution the power of Parliament over the colonies is subject to limitations, and its sovereignty is a technical and unreal attribute.

#### OTHER AUTONOMOUS DEPENDENT COMMUNITIES

The system of autonomy under which the British colonies live has no exact parallel elsewhere, but autonomous dependencies resting on a different basis are not uncommon. Within the British empire, Ireland, for many centuries, enjoyed a large degree of autonomy and was described as a "dependent subordinate kingdom;"<sup>44</sup> but this autonomy was held at the will of England, whose sovereignty was not only asserted by solemn declaration,<sup>45</sup> but exercised by legislation declaring all acts of the British Parliament previously made to be in force in Ireland.<sup>46</sup> When it was proposed in 1885 to give Ireland home rule, the plan contemplated constitutional autonomy under which the Parliament of Great Britain renounced the power of internal legislation over Ireland; it was provided that the Home Rule Act itself should be changed only with the consent of Ireland or by a parliament to which Irish members should be summoned. Mr. Dicey admits that under this plan the retention of sovereignty by Parliament would have been very doubtful.<sup>47</sup>

The status of Finland in Russia was that of an autonomous state from the time she was annexed to that empire. The Finnish constitution was repeatedly confirmed by Russian emperors, and it secured to Finland the co-operation of representative legislative bodies in internal legislation, which is unknown elsewhere in Russia. Quite recently Russia has given to this autonomy a restrictive interpretation practically destroying it, by excepting from it all general laws for the empire as well as all laws applied within the boundaries of the grand duchy, if they apply to the common necessities of the empire or have connection with the legislation of the empire.<sup>48</sup> Even the total destruction of her autonomy would not prove anything against the previous legal

<sup>44</sup> BLACKSTONE, Vol. I, p. 99.

<sup>45</sup> 6 George I., chap. 5.

<sup>47</sup> DICEY, *England's Case against Home Rule*.

<sup>46</sup> 10 Henry VII.; 4 Inst., 351.

<sup>48</sup> Ukase of February 15, 1899.

status of Finland, for Russia's action toward that end would have to be regarded as a political act of state similar to an act of annexation, just as Rome not uncommonly reduced her autonomous dependencies to subjection by the mere exercise of her political power.

The relation of Norway to Sweden was in the beginning very much like that of Finland to Russia, but it has come to be regarded as a union on nearly equal terms, in which Sweden claims only a controlling voice in foreign affairs. Norway disputes even that, and, if her present agitation succeeds, the union will be as equal as that between Austria and Hungary. On the other hand, the status of Croatia in Hungary is that of an autonomous province, whose rights of self-government, extending to internal affairs, worship, education, and justice, rest upon compact with Hungary, which cannot be altered by one-sided act. The Congress of Berlin in 1878 conferred autonomy upon Eastern Roumelia, and left the sovereignty of Turkey over Bulgaria little more than nominal; and since the consolidation of the two states their status has been alike. Turkey holds purely nominal rights over Bosnia, Herzegowina, and over Egypt, and rights very little more substantial over Cyprus; these territories, however, have fallen under the influence of other powers. Wherever autonomy exists it seems to represent a transitional compromise stage on the way to incorporation or separation, and not a deliberate plan of imperial organization. Hence these cases can hardly be regarded as typical. They reveal, however, the fact that the sovereignty of some of the most important powers of the world does not extend over the whole of their territories.

#### PROTECTORATES

While the system of colonial autonomy is peculiar to Great Britain, nearly all nations with colonial possessions have established in name or in substance protectorate relations. The protectorate has been found convenient, where political control was desired without the responsibility of internal government, or where, for political reasons, it was expedient to veil the fact of subjection. Athens and Rome virtually exercised a protectorate over the states which were in subordinate alliance with them respectively. The feudal relation of suzerain and vassal was in some respects analogous to a protectorate. In the modern history of Europe we find comparatively few and unimportant protectorate relations between European states. For several centuries after 1454 the republic of Dantzic recognized the king of Poland as protector; the Confederation of the Rhine was formed in 1806 under the protection of Napoleon, and lasted until 1815; the Congress of Vienna organized the free and independent city of Cracow under the protection of Russia, Austria, and Prussia, owing chiefly to the unwillingness of Russia to consent to the annexation of the city to Austria, which, however, took place in 1846; in 1815 also the Ionian Islands were placed under British protectorate, which was renounced in 1863 in favor of a union of the islands with Greece. At present the republic of San Marino is under the protection of Italy, and Andorra under the joint protection of France and of a Spanish bishop.



In the colonial world, on the other hand, protectorates are many and important. Great Britain claims a protectorate, in fact or in name, over the native states of India, comprising 600,000 square miles and seventy millions of people; over several principalities (Johore, Penang, etc.) in the Malay peninsula, on the Persian Gulf, and in north Borneo; in Africa over Zanzibar, Betchuanaland, and the Niger coast, and practically, though not technically, over Egypt; in Australasia over the Tonga Islands. A considerable number of the remoter districts of the Sunda Islands stand under Dutch protectorate. France governs as protectorates the following dependencies: in Asia, Annam, Tonkin, and Cambodja; in Africa, Tunis (formerly also Madagascar); in Australasia, Tahiti. Russia holds Bokhara and Khiva under her political control. Germany calls her colonies protectorates (*Schutzgebiete*). It thus appears that this form of control has been adopted for a not inconsiderable portion of the European colonies.

The protectorate is resorted to by preference where the objects of imperial policy are satisfied by the establishment of a preponderating political influence over some state, thereby excluding at the same time the influence of other states, while international considerations or the conditions in the protected state make its absolute subjection and destruction as a distinct political entity impracticable or inadvisable. The relation differs very much in different cases, and often is involved in considerable obscurity. While it is necessary to take into consideration the act establishing the protectorate, it must be remembered that the relation is never formulated with legal precision, partly because the control is intended to be left flexible, partly because there may be a desire to save the susceptibilities of the protected power, which may go so far that even the fact of control or dependence is not expressed. It is characteristic that the term "protectorate" emphasizes that aspect of the relation which is of much less importance than the correlative power of control.

It may happen that there is no formal act whatever establishing the protectorate, which rests upon *de facto* power coupled with tacit understandings. This is England's position in Egypt, which is not even officially recognized as a protectorate. British troops occupy the country, and the representative of Great Britain, assisted by British administrators, exercises a controlling influence on the government. The British government "advises" the Egyptian government, and the British representative is instructed that

it should be made clear to the Egyptian ministers and governors of provinces that the responsibility which for the time rests on England obliges Her Majesty's government to insist on the adoption of the policy which they recommend, and that those ministers and governors who do not follow this course should cease to hold office.<sup>49</sup>

This constitutes a protectorate in fact, if not in name.

In India the British protectorate regularly rests upon some express act, usually in the nature of a treaty, in many cases concluded by the East India Company, to whose

<sup>49</sup> MILNER, *England in Egypt*, pp. 32, 33.

position the present Indian government has succeeded. Probably all these acts stipulate that the protected state shall not maintain foreign relations, the control of which by the protecting power is of the essence of every protectorate. One form of treaty, which seems to be typical, establishes friendship, alliance, and unity of interests between the two governments, the native ruler, however, at the same time promising to act in subordinate co-operation with the British government and acknowledging its supremacy.<sup>50</sup> Other treaties of friendship and alliance recite that the ruler has succeeded to the government by the favor of the British government, and he promises to pay the utmost attention to such advice as the British government may offer him, and to adopt regulations suggested by the British government for insuring order and integrity in every department of administration.<sup>51</sup> In another case it is even stipulated, in an instrument transferring the government of Mysore to the native ruler, that in case of breach or non-observance of the conditions set forth the British government may resume possession of the Mysore territories. On the other hand, the treaties with Johore and Bahang, in the Malay peninsula, contain no expressions implying dependence or subordination beyond the surrender of the control of foreign relations. Quite a different kind of power is exerted in the Betchuanaland protectorate, where the British high commissioner is authorized "by proclamation to provide for the administration of justice, the raising of revenue, and generally for peace, order, and good government of all persons within the limits of this order."<sup>52</sup> The native chiefs are merely incidentally referred to in this order.

In Netherlandish India there remain a considerable number of principalities which are governed by native rulers standing in varying relations to the Dutch government. A Dutch writer<sup>53</sup> says there are as many different sorts of treaties as there are princes, but distinguishes five categories of relations:

1. Where there are no treaties, so that the Dutch supremacy appears to have a purely international character. Such is the status of Wadjoe in Celebes. As early as 1859 a letter was written to the native ruler: "We shall impose no unacceptable conditions nor meddle with the domestic affairs of your lands, but we can no longer tolerate that you refuse to conclude a treaty with us." Yet down to 1887 no treaty had been concluded.<sup>54</sup>

2. Where there are treaties of alliance and sovereignty, but no officials to watch over the execution of these treaties.

3. Where there are treaties, and Dutch officials who are merely political agents watching over their observance.

4. Where the treaties reserve to the Dutch jurisdiction over those of the population who are regarded as Dutch subjects.

5. Where Dutch courts have jurisdiction over the natives as well as Dutch subjects, so that there remains only an administrative autonomy within narrow limits.

<sup>50</sup> Treaties with Khyrpoor and Bhopal, 1838.

<sup>51</sup> Treaties with Nagpore and Berar, 1826.

<sup>52</sup> ILBERT, *Government of India*, pp. 430, 438.

<sup>53</sup> *Indische Gids*. (1883), Vol. I, p. 449, on the future of the native princes in the outer possessions.

<sup>54</sup> *Ibid.* (1887), Vol. I, p. 757.

A writer on South Celebes<sup>55</sup> states that the country is divided into government, feudal, and allied territories, and that, according to announced principles, the criterion of the concluded alliances lies in the word "protectorate." An examination of some of the more recent official acts establishing relations between the Dutch government and the principalities shows that they take the form of one-sided declarations as well as of treaties, but in either case the king of the Netherlands is recognized as lawful overlord or suzerain (*wettig opperheer*), and the native prince promises fidelity, obedience, and submission, or due respect and obedience, or to do all that becomes a faithful and honest prince and vassal. The Dutch government generally reserves to itself the right to confirm the successor to the present ruler. In every case the right to entertain relations with foreign powers is expressly surrendered.<sup>56</sup>

The relation of Russia to Khiva and Bokhara has received legal formulation only in treaties, which evidently do not specify all the powers of control which Russia as a matter of fact exercises. The treaty with Khiva of August 24, 1873, opens with a declaration by which the khan

acknowledges himself to be the humble servant of the Emperor of all the Russias. He renounces the right of maintaining any direct and friendly relations with neighboring rulers and khans, and of concluding with them commercial and other treaties of any kind whatsoever, and he shall not, without the knowledge and permission of the superior Russian authorities in central Asia, undertake any military operations against such neighboring countries.

The treaty then goes on to specify certain commercial privileges of the Russians in Khiva.<sup>57</sup> The treaty with Bokhara of September 28, 1873, gives similar commercial privileges, provides for mutual diplomatic representation, stipulates for the abolition of the slave trade, and ends with the declaration that

His Highness, being sincerely desirous of developing and strengthening the friendly and neighborly relations which have subsisted for five years to the benefit of Bokhara, shall be guided by the seventeen articles comprising the treaty of friendship between Russia and Bokhara.<sup>58</sup>

There is not a word indicating dependence or protectorate.

The French protectorates all rest on treaty or convention, which likewise generally fail to indicate the extent of control which is exercised by France. In 1863 a treaty was concluded between France and Cambodja granting privileges of commerce and of jurisdiction, and by which France promised to maintain order and quiet in Cambodja. A French resident was to be appointed and allowed to be present at the meetings of ministers. Under this treaty no attempt was made to control the internal affairs, and specific powers of internal control were created only by a new treaty of 1884. In 1874 a treaty was concluded between France and Annam establishing peace, friendship, and permanent alliance. France, recognizing the sovereignty of the king and his independence of any foreign power, promises him assistance for

<sup>55</sup> *Indische Gids*, (1887), Vol. I, p. 757.

<sup>57</sup> KRAUSSE, *Russia in Asia*, p. 347.

<sup>56</sup> See *ibid.* (1888), Vol. IV, p. 161, Djambi; (1891), Vol. IV, p. 846, Sintang; (1894), Vol. I, p. 585, Siak; p. 881, Kerti.

<sup>58</sup> *Ibid.*, p. 351.



the maintenance of peace and order, and for defense against any attack. In consideration of this protection the king promises to conform his foreign policy to that of France, and not to change existing diplomatic relations; also to notify France of any treaty of commerce. This treaty was in 1883 superseded by one in which Annam recognizes and accepts the protectorate of France, with the consequences of this form of relation from the point of view of European diplomatic law, *i. e.*, that France will preside over the relations of all foreign powers with the Annam government, which can communicate diplomatically with these powers only through the mediation of France. A resident general is established in Annam, who is not to meddle in internal administration. By a number of royal decrees, evidently dictated by France, the French resident is, however, given a controlling influence in the councils of the king, and is placed at the head of the administration in Tonkin.<sup>59</sup>

The French control over Tunis was inaugurated by a treaty of May 12, 1881, which provides for French military occupation for the purpose of restoring order and security. The French government promises to render the bey assistance against any danger and guarantees the execution of all treaties. A French resident watches over the execution of this treaty. The bey promises not to conclude international acts without previous notice to the French government. The finances are to be reorganized by joint agreement in such a manner as to secure the creditors of Tunis. By a supplementary treaty of June 8, 1883, the bey, in order to facilitate to the French government the accomplishment of its protectorate, binds himself to proceed to the introduction of such administrative, judicial, and financial reforms as the French government shall deem expedient. In obedience to this stipulation, the bey, at the dictation of France, has reorganized the government of Tunis in such a manner as to give a controlling influence upon all affairs to the representatives and agents of the French government.

The German colonies are officially designated as "protected territories" (*Schutzgebiete*). In east Africa and New Guiana the government is in the hands of chartered companies, the relation of which to Germany is determined by the provisions of their respective charters. In southwest Africa the government has directly concluded treaties with native chiefs. By these treaties the emperor assumes the protection of the native territories and people. The chiefs bind themselves not to cede territory to foreign powers or to make agreements with them without the emperor's consent. The Germans obtain the right to stay and settle in the native territories, to acquire real estate, carry on trade, and to be protected in their person and property. The chiefs are not to be restrained from the continued levy of usual taxes; they retain jurisdiction over the natives, while that over all other persons is ceded to the German government; controversies between natives and others are to be determined in accordance with future agreements, or by provisional mixed courts.<sup>60</sup>

It appears from this summary review of the acts establishing protectorates that

<sup>59</sup> Decree of August 13 and September 27, 1897.

<sup>60</sup> GEORG MEYER, *Deutsche Schutzgebiete*, pp. 8, 9;  
LABAND, *Staatsrecht*, Vol. I, p. 776.

they vary considerably in the forms chosen to indicate the nature of the relation. In no case are words used that might imply incorporation or annexation of the protected state by the protecting power. Nowhere do we find the status of the protecting toward the protected state described as sovereign, but, on the contrary, we do find an express recognition of the sovereignty of the protected ruler (Annam, 1883). In some cases words are used to indicate inequality of status; so where the Indian princes promise subordinate co-operation and acknowledge British supremacy, or where the khan of Khiva calls himself the humble servant of the Russian emperor, or where the princes in the Sunda Islands are called vassals, recognize the Dutch monarch as suzerain, and promise fidelity, obedience, and submission. In the treaties with Bokhara, Johore, Annam, and Tunis the parties appear to treat as equals. Very often protection is promised, yet the term "protectorate" occurs only in the French treaties of 1883 with Annam and Tunis. However, the word "protectorate" has found its way into official diplomatic language, and occurs, for example, in the Congo Act of 1885, where a distinction is made between taking possession and establishing a protectorate.<sup>61</sup> It is said that at the Congo conference England desired a further distinction to be recognized between "protectorate" and "protection," the latter to apply where a consul in an uncivilized territory was vested with jurisdictional powers; but this was not accepted by the conference.

Has the term "protectorate" then a definite meaning? Does it always involve the same status, if not the same powers and obligations? It might be inferred that such was the fact from the French reference in the Annam treaty to a "protectorate with the consequences of this form of relation from the point of view of European diplomatic law." In examining the authorities, it appears that the international and the national or constitutional aspect of the relation should be held apart.

As for the international aspect, there is no doubt that the protectorate relation always implies the surrender of the control of the foreign relations. This is regularly expressed in some form or other, so, for example, that the protected prince will not maintain relations or communications with any other foreign power. The Russian treaties with Khiva and Bokhara are silent on the point, which, however, in their case admits of no doubt. No protected state has diplomatic representation of its own. Writers on international law designate the protected state as semi-sovereign, implying thereby that, notwithstanding the condition of dependence, its distinct individuality as a state is not lost; they also quote with approval the case cited by Phillimore, Vol. I, p. 106, in which the English Admiralty Court decided that during the war between Great Britain and Russia the Ionian Islands, then under British protection, enjoyed neutral privileges as regards the right to trade to Russian ports. It seems, moreover, that when one state enters under the protection of another, the commercial or other treaty privileges of other nations in its territory do not cease, since its status as a state remains; this was one of the considerations which induced France in 1896 to annex Madagascar as a colony rather than to continue its protectorate.

<sup>61</sup> Art. XXXIV.

As regards the status of the protected state in its relation to the protecting power, there is no firmly or uniformly established doctrine. The control of foreign relations as a rule does not exhaust the powers of the protector, and where nothing else is surrendered, a claim of an undefined suzerainty is not put forward with great confidence, as the case of the Transvaal has shown. Great Britain has in several cases authoritatively defined her position toward some of her protected states. So with regard to the Ionian Islands, a note was addressed by the secretary of foreign affairs to the British ministers, saying:

The Ionian Islands are not, as some persons appear to suppose, a part of the possessions of the British Crown. . . . It appears clearly . . . that the intention of the High Allied Powers was to found in the seven islands a free independent state, which by the protection of so powerful a country as Great Britain might develop its resources without fear of external aggression or internal anarchy. . . . Her Majesty's government conceive that it would be a perversion of the trust confided to them by Europe and a breach of the faith towards the Ionian people, if Great Britain were to turn a portion of a single free and independent state under her protection, into a part of her military possessions, and to make Corfu an element of her military power.<sup>62</sup>

It is clear that the British protectorate over native Indian states is not of the same disinterested character. Yet with regard to Johore it has been held that its sultan is a sovereign prince. The sultan was sued in an English court, and it was contended that the court could not take jurisdiction over him. The colonial office, being applied to for information, answered that the treaty with the sultan established relations of alliance and not of sovereignty or dependence. The court in accepting this view held that the agreement not to enter into treaties with other powers was not the abnegation of a right, but only a condition upon which the protection stipulated for was to be given.<sup>63</sup> The doctrine of this case evidently does not quite apply to those rulers of the native states of British India whose condition is in the treaty described as one of subordinate alliance or who expressly acknowledge British supremacy. Yet, though these princes may not be sovereign, it does not follow that they are subjects of the king, and they are certainly never described as such, being generally spoken of as feudatory princes.<sup>64</sup> The legal position of the crown or of Great Britain toward them does not appear to have been authoritatively formulated.

The nature of the British protectorate over Betchuanaland in south Africa is quite different from that of the Indian protectorates. An order made for this protectorate provides that

the British High Commissioner may by proclamation provide for the administration of justice, the raising of revenue, and generally for the peace, order and good government of all persons. . . . The high commissioner in issuing such proclamations shall respect any native laws or customs by which the civil relations of any native chief, tribes, or populations under Her Majesty's protection are now regulated except so far as the same may be incompatible with the due exercise of Her Majesty's power and jurisdiction.<sup>65</sup>

<sup>62</sup> *Staatsarchiv*, Vol. VII, p. 286.

<sup>63</sup> *Mighell v. Sultan of Johore*, 1894, 1 Q. B., 149.

<sup>64</sup> The royal proclamation read at the Delhi Durbar on January 1, 1903, speaks of "all my feudatories and subjects

throughout India," and in a message of response one of the princes speaks of himself as "an ally ever faithful and true."

<sup>65</sup> ILBERT, *Government of India*, pp. 430, 438.



This evidently asserts a power of direct government. When Dr. Jameson in 1895 made his famous raid into the Transvaal a portion of the expedition started from a place named Pitsani, situated in Betchuanaland protectorate. Later on Jameson and his followers were indicted under a statute making it a criminal offense to institute hostilities from any part of Her Majesty's dominions against a friendly power. It was therefore necessary to decide whether the Betchuanaland protectorate was part of the dominions of the crown. Lord Chief Justice Russell, who presided at the trial, held that the official documents bearing upon the British status were contradictory and not conclusive, and that the exercise of dominion was a question of fact, which he therefore left to the jury.<sup>66</sup> The jury, finding a verdict of guilty, must have regarded the fact of dominion as established; but it seems strange that the sovereignty of the crown in any portion of the empire should have been treated as a question of fact, and it is said that the propriety of Lord Russell's course was questioned by English lawyers.<sup>67</sup>

Most of the German jurists regard the position of Germany in her African colonies as that of a sovereign power.<sup>68</sup> Laband compares the relation of the empire toward the native governments to its relation to the German member-states. The power is called sovereign because it is one of government, and not merely a conventional right, and because the governmental power is supreme. The wording of the treaties is, however, such that they might on their face be interpreted as creating simply a claim to protection in consideration of certain commercial privileges, a control of foreign relations, and extra-territorial jurisdiction. Yet the actual conditions go very far toward justifying the German view. Where a territory occupied by people with a primitive and rudimentary organization places itself under the protection of a civilized and powerful state, it is inevitable that the latter should assume an extensive direct control, for the simple reason that the need of an advanced government is created only by its appearance on the stage, and must be supplied by its own organs in the absence of any native machinery for that purpose. The native government naturally sinks to the level of mere tribal autonomy without the character of territorial jurisdiction. The political control which protecting powers regularly exercise will here become administrative supervision, and very little hesitation will be felt to interfere summarily where considerable interests are at stake. When German papers report that corporal punishment is inflicted upon the son of a chief by order of German authorities, it appears that, although such a case may be extreme, yet the usual restraints toward the protected ruler which are so characteristic of all protectorates hardly exist with regard to native chiefs in Africa, and that the whole idea of a protectorate is in reality inapplicable. Similar considerations have undoubtedly guided the British government in the Betchuanaland protectorate in conferring the most extensive and practically exclusive governmental powers upon the British commissioner, and from this point of view the conclusion seems inevitable that the protectorate is part of the

<sup>66</sup> See *London Times*, July 29, 1896.

<sup>67</sup> *London Weekly Times*, August 17, 1900, obituary notice of Lord Russell.

<sup>68</sup> LABAND, Vol. I, p. 786; GEORG MEYER, *Schutzgebiete*, pp. 67-87; VON STENGEL, *Hirth's Annalen*, 1887, p. 805.

dominions of the crown. The letter of the treaty yields to the force of circumstances, and of the intended protectorate little remains beyond the name.

The French protectorate is in many respects *sui generis*. Great Britain and Germany in the south African protectorates have assumed practically unrestricted functions of government, because no adequate organization existed for their performance; Great Britain in the native states of India leaves the internal government almost entirely to the native princes. The conditions which France found in Annam and Tunis were much more like those in India than like those in south Africa: there were ancient and highly organized, if corrupt and inefficient, political systems, with firmly established bureaucracies and an elaborate routine of official business. Notwithstanding this, the French government assumes in Annam, as well as in Tunis, to direct all important branches of the government. At the same time the French who in their governmental arrangements habitually pay greater attention to theory and systematic classification than other nations, sharply distinguish between colonies and protectorates and hold that the native rulers of the latter retain their sovereignty.<sup>69</sup> However much this may be a fiction, it logically excludes a claim of legal sovereignty on the part of France.

On the whole it appears that those German jurists are correct who insist that it is impossible to bring the status of the protectorate under one formula equally applicable to all cases. To determine the relation between protecting and protected power and the constitutional position of the latter fully, it is necessary to study carefully the division of powers and methods of control in each case, which should form the subject of a separate inquiry. It is, however, possible to determine whether the protecting power can in any case be called sovereign, understanding by sovereign a governmental power not subject to any legal or constitutional restraint. The question cannot be answered by showing the extent of political power enjoyed over the protectorate; it may be conceded that Great Britain and France will find ways and means to carry any point they may deem essential to their interests. Sovereignty is absolute power, and absolute power, politically speaking, does not exist; nothing will be deemed essential that cannot be secured. The question can only be: Will any and every governmental act representing the highest legal will of the protecting power be with regard to the protectorate a legal or lawful act? To put it concretely: Has the British Parliament the same legislative power over Hyderabad or Mysore which it has over Bengal? Mr. Tupper, who has written most fully on the Indian protectorates, puts the question and leaves it unanswered.<sup>70</sup> That Parliament possesses legislative powers coextensive with the sphere of British control and jurisdiction may be conceded; thus it has legislated for British subjects in the protectorates, or rather has delegated such legislative power to the Indian legislature;<sup>71</sup> but this does not prove that it has all legislative powers. Even when the native state grants to the

<sup>69</sup> Report to the president of the republic on the situation in Tunis, 1890; printed in *Le Régime des Protectorats* (1899), Vol. I, pp. 505, 509: "Le Bey a gardé sa souveraineté."

<sup>70</sup> *Our Indian Protectorate*, p. 353.

<sup>71</sup> Sec. 1 of Government of India Act, 1865, in ILBERT, *Government of India*, p. 444.

British or Indian government lands for railroad purposes, it cedes full jurisdiction and administrative control short of sovereign rights;<sup>72</sup> and the reservation is significant. British sovereign power is not established by the fact that the protected princes hold on condition of good behavior, and that, as was said in the British Parliament,<sup>73</sup> the check on native misgovernment is not, as it was formerly, insurrection, but forfeiture to the British government. This power, which led to a temporary assumption<sup>74</sup> by the British of all functions of internal government in Mysore, is avowedly a quasi-judicial power, to be exercised only in a contingency, and therefore only under a limitation. The usual test of sovereign power—Will its dictates be accepted without question by the courts as valid law?—seems to be inapplicable; for the recognition by British courts would be inconclusive, unless it was indorsed by the native courts of the protected state; and they could probably be silenced or overruled by the exercise of political power. If we ask, however, Does the British Parliament itself recognize binding limitations? the answer cannot be doubtful, and must be against the claim of sovereignty; the British Parliament would as soon have undertaken to legislate for the Transvaal as for the domestic concerns of Johore, which are not by treaty or agreement placed under British jurisdiction. The English law does not in other cases leave the power of Parliament in doubt: sovereignty has been asserted over the American colonies and over the East India Company; it is now asserted as a matter of law even over the autonomous colonies; but there has been no such claim, nor would there be any conceivable basis for it, in the case of the protectorate states, which have entered into a relation obviously and avowedly not surrendering every right. The destruction of the native government would be a political act of state analogous perhaps to the assumption of power in Egypt, not to be judged by principles of constitutional law, and for which in all probability an act of Parliament would not be chosen. The same considerations exactly apply to French protectorates. When in 1896 Madagascar was changed from a protectorate to a colony, the queen was compelled to sign an act in which she recognized the taking possession of Madagascar by France, she being allowed to retain her title and honors. This is clearly not the way in which legal sovereignty is exercised.

The conclusion must be that, however much protectorates differ from each other, they are alike in this, that the protecting power is not sovereign, *i. e.*, there are some powers in every protected state which cannot be taken away without its consent by any legal process whatever. There is this difference between protectorates and the British autonomous colonies, that the limitation which negatives the claims of sovereignty is in their case primarily legal, in the case of the British colonies constitutional and not legal. Constitutional understandings play, however, a very important part in the case of protectorates as well as in the case of autonomous colonies, excepting always the so-called protectorates over uncivilized tribes. There

<sup>72</sup> TUPPER, p. 376.

<sup>73</sup> HANSARD'S *Debates*, Vol. CLXXXVII, p. 1067.

<sup>74</sup> From 1832 to 1867.



is a double understanding: that the legal power of government left with the native ruler shall be exercised in accordance with the advice tendered by the protecting government, and that this advice will keep within certain limits, and at all events will not extend to asking the ruler to surrender his formal and nominal rights altogether. The mutual check and restraint is perhaps the stronger because it cannot be made the subject of a legal controversy; the necessity of saving appearances may be relied upon to some extent to prevent abuses. The relation is analogous to that of the constitutional monarchy, as has well been pointed out by a French writer explaining the position of France in Tunis:<sup>75</sup>

The régime of the protectorate is a method of indirect government. The protector does not substitute by force his will for that of the protected; he directs him, advises him, after having assured himself of the means which will make his advice accepted. But in directing him, he spares his susceptibilities (*il le ménage*), he shows him some deference. He would take care not to discredit him with his people, for it is important that they should be kept under the illusion that they have not changed their master. They encounter in their relations to the government the same faces, they recognize the voice which gives them orders as familiar, they are not disturbed in their habits of obedience. Tunis as before is ruled by her bey, he has kept his rights as a legislator, all the attributes of sovereignty; he governs his subjects through the mediation of his ministry, which is half native, half French. If Sidi Ali Bey were a constitutional sovereign, he would continually have to reckon with his constitution. The constitution of Sidi Ali Bey is the French resident-general.

#### THE ABSENCE OF SOVEREIGNTY

When we consider how large a portion of the world is covered by federated states, autonomous colonies and provinces, and protectorates, the fact that in all these territories there is no perfect sovereignty is very significant. It means that absolute consolidation of political power cannot at the present time be regarded as the only successful condition of political life, and that it is certainly not the normal form of imperial organization. If we take the great powers by themselves without their outlying possessions, we find that Great Britain, France, and Russia are consolidated, while Germany, Austria-Hungary, and the United States are not; Italy has placed the pope and the Vatican beyond her jurisdiction,<sup>76</sup> and she claims only a qualified control over San Marino. When we regard empires instead of domestic territories, we find that there is none in which sovereignty is co-extensive with political control. All Australia, nearly the whole of America, and a large part of Asia and Africa are held under political power which is qualified. The states which have none but unqualified political power are few and mostly of second-rate importance: Spain, Portugal, Greece, Denmark, Belgium, and Japan. In other words there is comparatively little political power which through the whole extent of its operation is sovereign, *i. e.*, subject to no limitations which may be properly designated as legal or constitutional.

<sup>75</sup> VALBERT, *Revue des deux Mondes*, Vol. LXXVIII, p. 192.

<sup>76</sup> HOLTZENDORFF, *Völkerrecht*, Vol. II, secs. 40, 41.

Whether we should regard the absence of sovereignty as a serious defect in political organization must depend upon the value which we attach to that interesting and much-discussed concept. If sovereignty meant absolute political power, we should have to recognize in it the controlling factor in community life; but it is generally conceded that in the infinite complication of forces and tendencies which constitute the body politic there can be no such thing as a power which could accomplish anything and everything. All political power is and always has been held upon condition that it be not strained beyond a given point, and that point, which can only be determined by the event, is its limit. We can speak of absolute and unlimited power only in a strictly legal and formal sense, in the sense, namely, that every one of its dictates is held to constitute a rule of law.<sup>77</sup> The existence of a rule of law is tested by judicial recognition, but a judgment may be unenforceable, the law may be a dead letter. The political value of such a legal sovereignty seems to lie in this, that a machinery is provided for bringing about any conceivable change in political or civil conditions that may become desirable or necessary, through the forms of law, the law thus attempting to make its own rule operative in perpetuity. Provided the machinery works as intended, revolutions or other extra-legal acts will be unnecessary. It follows from the nature of such a power that no other legal power within the same community can conflict with it, and this is what is meant when it is said that sovereignty must be one and indivisible.

For the accomplishment of its avowed purpose sovereignty must be so organized as to represent the presumable preponderance of political power, and this is regularly true. But at the critical moment the preponderance may fail. The existence of a sovereign power therefore does not protect against possible revolutions. For ordinary purposes of government limited powers are quite adequate, and sovereignty may, therefore, be normally in a dormant state, as it is in the government of the United States. Great and radical changes, on the other hand, which require the setting in motion of the sovereign power, are rarely met by it in an adequate manner; witness the last three amendments of the constitution of the United States, which were secured only as the result of war, and then only by almost revolutionary methods.

Even where an amendment of our constitution is adopted in a perfectly regular manner, the process provided for it calls attention to an essential attribute of all sovereign power: the necessity under which it is to move and express itself in predetermined forms. The popular will can legally formulate itself only through organization, and the manifestation of the sovereign will must, if it is to accomplish its purpose, be unmistakable. It would be impossible to tell whether a certain dictate is to be accepted conclusively as law, if its form were not known in advance. Extra-legal or revolutionary power can therefore not be sovereignty; although, by overriding existing law and sovereignty, it may ultimately succeed in establishing a new law under which it will be recognized as sovereign. Sovereignty, being a legal concept,

<sup>77</sup> A. V. DICEY, *The Law of the Constitution*, p. 69.

rests on law and presupposes it, and therefore is not absolutely free; unlimited in substance, it is limited and bound by form. It can accomplish anything, provided it obeys that form; acting through that form it may even adopt another form for its expression; but one form can only be superseded by another form, and any form, while it lasts, constitutes an effective limitation.

The formal limitation of sovereign power does not alter its nature with regard to those subject to it; for, while there is less likelihood of its exercise when the form is cumbrous and surrounded by checks, there is no guaranty that the difficulties of form will not be overcome. Where the expression of sovereign will requires the concurrence of a majority or of a more than simple majority of those subject to it, this constitutes a very substantial protection to the subject interests, but leaves every party in interest liable to the possibility of being met by an adverse combination sufficient to overcome his resistance. Otherwise where the sovereign will expresses itself only through the concurrence of a number of factors or powers each of which represents a distinct interest. The combination of these factors is then still sovereign, but each factor is removed from the exercise of sovereign power. The sovereignty of Great Britain is vested in Parliament, which acts through the concurrence of the crown and the two houses; it follows from this that the crown of Great Britain is beyond the operation of sovereignty. This shows that a limitation of form may become a limitation of substance, and that it is incorrect to speak of the existence of absolutely sovereign power even in England. The legal omnipotence of Parliament involves the perpetuation of a power not itself sovereign, and thus fails to fulfil the only rational purpose of unlimited power, namely, the possibility of effecting by authority of law any conceivable change. The legal abrogation of the crown would require the consent of the crown, and the idea of consent negatives that of power and authority.<sup>78</sup>

The failure of authority at some point should, however, not be regarded as the failure of the idea of law, for the ultimate resort and support of the law is, in all modern states, the voluntary consent and submission on the part of the majority of those subject to its rule. The power of the law is the power of numbers, and numbers derive their power from consent. The concurrence of a number sufficient to constitute the requisite authority can be obtained only by mutual concession and forbearance, and practically the whole community are sharers and beneficiaries in this process of compromise, and thus become parties to the consent which upholds the law. This, as much as, or perhaps more than, the hopelessness of resistance, accounts for the fact that actual resort to physical force is of comparatively rare occurrence in our legal processes, and that in many early systems the enforcement of the law was not carried to the last point of compulsion. The fewer the parties in interest, the less likely an absolute preponderance of power, and the more likely the building up of the rule of

<sup>78</sup> Professor Dicey refers to a parliamentary practice in accordance with which the consent or recommendation of the crown is required to the introduction of bills touching the prerogative or the interests of the crown. (*The Law*

*of the Constitution*, p. 61.) This may be intended as an additional practical safeguard, but the perpetuity of the crown is legally independent of the practice.



law on the basis of compromise. During the constitutional conflict in Prussia, preceding the war of 1866, Bismarck insisted again and again that compromise was the essential principle of every constitutional state.

The compromise between the different constituent factors of the political community, which distinguishes limited monarchies, finds its parallel in the compromise between different territorial powers which distinguishes the federated state and the world-empire.

The absence of an absolute legal or constitutional power does not, however, prevent the existence of a political preponderance of varying degrees of strength. To give the empire the requisite cohesion, the preponderance should be sufficient to give effect to the will of the imperial power in matters essential to such cohesion. The preponderance need not be sufficiently strong to be able to crush local autonomy. A power which is preponderant without being absolute constitutes supremacy, but not sovereignty.

The preponderance of the imperial power may be given further legal effect by vesting in it the jurisdiction to determine controversies arising as to the respective spheres of the superior and the subordinate governments. This is a notable feature of the federal organization, while it is lacking in the control of protectorates. While under this arrangement the imperial power pronounces upon its own attributes conclusively, it does so under procedural safeguards, which constitute normally sufficient guarantees against the violation of faith. Judicial supremacy, therefore, so far from resulting in absolute sovereignty, is an additional recognition of indestructible right.

The idea of sovereignty has resulted from the consolidation of the modern state out of a number of petty communities as a protest against political claims unaccompanied by political capacity. The power of the modern consolidated state over its subdivisions, provinces, cities, estates, and corporations, is practically absolute and unlimited, and with regard to them sovereignty has come as near being a reality as in the nature of things it can be. The claim of the state to similarly absolute power over the individual corresponds to no similar reality, and is but a legal fiction. The recognition of inalienable and indestructible private rights under our constitutions is practically an abandonment of this fiction. It is, moreover, significant that some American courts claim for municipalities an inherent right to local self-government as against the legislature of the state, independent of express constitutional recognition. This shows that there is at least a tendency to deny the absolute dependence of a political community which has strong vitality, and which does not claim functions which it cannot perform. Where the subordinate community is so strong that its claims to recognition cannot be ignored, it seems but logical to deny the absoluteness of legal power over it. A legal limitation of supreme power cannot be contrary to the nature of the state, where it corresponds to political realities. And a recognition of all powers of government as limited seems rather in accordance with an ideal constitution of a state than a sign of backward or defective political development. From this point of view absolute political consolidation seems by no means to be the inevitable goal of imperial organization.

DECLINE OF THE MISSI DOMINICI IN FRANKISH  
GAUL





## THE DECLINE OF THE MISSI DOMINICI IN FRANKISH GAUL

JAMES WESTFALL THOMPSON

THE passing of the Carolingian *missi dominici* is a short but interesting chapter in the history of feudal origins, and deserves more than the general statement, with which it is usually dismissed, to the effect that the institution passed away in the course of the ninth century.<sup>1</sup> It is not without reason that Waitz and Guizot have concluded that, of all the Carolingian institutions, that of the *missi dominici* contributed most largely to the unity of the Frank empire; but they forget, in noticing the influence of the *missi*, also to observe the particular influence which Charles the Great had upon the institutions of his time, and which ceased at his death.<sup>2</sup> The life of Charles was the condition of the permanence of this administrative device. Government and society in the ninth century were transformed by slow degrees into something different. Yet the name might remain to institutions which had utterly changed. The terms in official use succumbed to the influence of modifications as subtle in operation as the "weathering" of a great building. A preliminary glance into the nature of the Carolingian empire will make an inquiry into the process of the decline of the *missi dominici* clearer.

The revolution of 751, which placed the Austrasian mayor on the Frank throne, implied a recognition of, and reliance upon, institutions that were of a feudal nature. Feudalism may be either a chain of steel or a rope of sand. The reign of the first Frank emperor is a proof of the truth of the first part of this proposition. Under him lordship and homage were links in a chain of steel. The strength of a chain is the strength of its weakest link. The strength of Charles's government was conditioned by the strength of its weakest member. But Charles was a strong man, and he sought to be served by strong men; hence the empire exhibited no sign of breaking down during his lifetime. The combination of Frank kingship, imperial supremacy, and

<sup>1</sup>SCHULTE, *Reichs- und Rechtsgesch.*, §49, 3; RICHTER, *Das karolingische Staatswesen*, p. 607; ESMEIN, *Histoire du droit français*, p. 69; BEAUCHET, *L'organisation judiciaire en France*, p. 326. Some facts on the decline of the *missi* may be gleaned from WAITZ, *Deutsche Verfassungsgeschichte*, Vol. IV (1885), chap. 8; but the allusions are scattered. It is a defect of Waitz's writing that he ignores historical sequence. BOURGEOIS's examination of the capitulary of Servais (*Le capitulaire de Kiersy*, pp. 239-49) is the best single study of the subject. KALCKSTEIN's *Privat-Docent Untersuchung, Robert der Tapfere*, has valuable but scattered information. The *Exkursus* is excellent. NOORDEN's *Hinkmar* (pp. 133, 134) has two pages upon the capitulary of Servais. VIOLLET, *Institutions politiques de la France*, Vol. I, has a single page (305) upon their decline. The account of the legislation of Charles the Bald in

LAVISSE AND RAMBAUD, *Histoire générale*, Vol. I, pp. 405-12, is succinct and admirable. DÜMMLER, *Geschichte des ost-fränkischen Reiches*, Vol. II, pp. 441-3, devotes three pages to the decline of the institution in Germany. With reference to the position of the *missi dominici* in Italy, the treatment is fuller. The excellent work of HANDLOIKE, *Die lombardischen Städte unter der Herrschaft der Bischöfe*, pp. 173 ff., may be consulted. SOHM, *Altdeutsche Reichs- und Gerichtsverfassung*, Vol. I, pp. 496 ff., has also collected the Italian proofs, but with an eye less to feudal influences than to juridical processes. The fullest work with reference to the *missi dominici* in Italy is FICKER, *Forschungen zur Reichs- und Rechtsgeschichte Italiens* (1869), Vol. II, pp. 209 ff.

<sup>2</sup>For this observation I am indebted to BOURGEOIS, pp. 242, 284.

headship of the vast feudal society beneath him, in spite of their real incongruity, were sources of power when co-ordinated in the person of one man and directed by a single will. But the efficiency of the imperial administration, in last analysis, depended upon the brain and heart and hand of the great emperor. His death released the forces which he had harmonized. Charles's successors found themselves confronted with grave difficulties. The imperial authority was called upon to defend its claim to universal sovereignty against the rising pretensions of the papacy for leadership in church and empire. The strain to keep things together was too great for the emperor's descendants. The magnificent heritage broke into fragments in the hands of his less able successors. Continual partitions weakened the unity of the empire and tended to dissolve the ties of vassalage and fidelity. The rupture of the empire was soon complete. In the ninth century the Frank monarchy was a centralized state in appearance only. In reality most of those political forces essential to a strong government had escaped from governmental control. The penetration of feudal influences into the government finally caught the last and greatest member of the Carolingian system, and in time the *missi dominici* also declined.

The institution of the *missi dominici*, like every institution, was the result of development. The prototype of the *missi* is to be found in the *legati* and *legatarii*, whom the Merovingian kings were in the habit of sending upon commissions, and who ceased to have authority when the particular duty assigned had been discharged.<sup>3</sup> The title *missus regis*, or the qualifying adjective *dominicus*, *regalis*, *palatinus*, or *fiscalis* was used. They were commonly chosen from the immediate circle of the court, and from early times it was the practice to associate a churchman and a layman.<sup>4</sup> Their duties were various: to restore order in the provinces; to receive homage in the name of a new king; and to collect the royal revenues. But most often these occasional *missi* are employed to redress the injustice of the counts.<sup>5</sup> The Austrasian mayors of the palace made extensive use of them.<sup>6</sup> It remained for Charles, however, to make the practice a permanent organic feature of the Frankish government. The *missi* became the acknowledged agents of the emperor, personally representing him, and endowed with an authority subject only to his revision.

When Charles established the *missi dominici* as a fixed feature of his government, he aimed to bind the widely separated parts of the vast Frank empire together, to arrest feudal tendencies in the state, and to enable him to keep in touch with each man and each place in his realm. It is significant that the creation of the *missi dominici* coincides in time (802) with Charles's effort to convert into an oath of vassalage and service the regular oath of allegiance which every freeman made to the king periodically.

<sup>3</sup> GREG. TOUR., V, 36, 6, 18; FREDG., 68; *Annales Einhard*, anno 798, in *M. G. H., Scriptores*, I, 185, capit. 779, §§19, 21. Cf. WAITZ, Vol. IV, p. 379.

<sup>4</sup> GREG. TOUR., VI, 18, 31; IX, 18. See "The Mission of Theodolf, Bishop of Orleans," cited by MONOD, *Rev. hist.*, Vol. XXXV, pp. 1 ff.

<sup>5</sup> See the proofs in BEAUCHET, pp. 69, 70.

<sup>6</sup> "Omnibus missis meis discurrentibus," 748, *M. G. H., Diplomata*, I, 105. Cf. HAVET, *Bibliothèque de l'École des Chartes*, Vol. XLVIII, pp. 29-31.

The important capitulary for the organization of the *missi dominici* is that of the year 802<sup>7</sup> and those supplementary to it.<sup>8</sup> In that year numerous agents, designated as *missi*, were appointed for a year, and were charged with the duty of reviewing quarterly the details of the administration practiced by the counts and other officials. Each circuit embraced a determined territory (*missaticum*)<sup>9</sup> composed of a number of counties, in which a count and a bishop had joint jurisdiction.<sup>10</sup> As a rule, there were two *missi* to each district, one temporal lord and one spiritual lord, exercising the power together. They were appointed for only one year, though the ecclesiastical appointment was frequently renewed. The importance of the office lay in the personal character of the *missus*, yearly change, separation from local interests, and the free choice of the king. For the most part the *missi* did not belong to the districts for which they were appointed, either by birth or by possession; moreover, they were not sent consecutively into the same region. These precautions were taken in order to keep them as free as possible from having personal interests involved in their public duties, and also in order to prevent them from localizing their power. The written instructions to the *missi* were called *capitula missorum*. They did not decide matters according to popular law, but according to official law. The activity of the *missi* did not extend throughout the whole year, but only for one month in each quarter. In the time of Charles, four annual local assemblies were held, at which the *missi* upon their circuits, with the advice of the local counts, named ecclesiastical and secular officials from the churchmen and freemen of the district.<sup>11</sup> At these times complaints against administrative officials were heard; and in order to become acquainted with matters, in each *missaticum* men of good repute were pledged to give them information.

The *missi* were the representatives of the king. Their duties were to supervise the administration of the counts, hear appeals, and report to the king cases of maladministration on the part of the counts, whose subordinate officials—*scabini*, *centenarii*—the *missi* had the privilege of nominating. In co-operation with the bishops, the *missi* looked to the material welfare of the church and inspected monasteries and other ecclesiastical foundations.<sup>12</sup> A particular duty was to see that military service and other services to the state were not evaded. In general, it was incumbent upon them to publish laws and ordinances, care for their execution, and punish their violation, in which duties they were to receive aid from counts and bishops. At the beginning of a new reign, the *missi* were required to exact the oath of fidelity from all subjects in the name of the new king. Their civil jurisdiction extended to the control of commerce, roads, bridges, streams, and river dams. More or less particular duties arose from the special needs of their circuits. Thus, from the time of Charles the

<sup>7</sup> M. G. H., *Leges*, I, 91 ff.

<sup>8</sup> "Cap. Missorum specialia," *ibid.*, I, 100; "Cap. Missorum item spec.," *ibid.*, 102; "Cap. Missorum specialia," *ibid.*, 115, etc.

<sup>9</sup> See DU CANGE, *Glossarium, in loco*; cf. BOURGEOIS, p. 241, note 2; BEAUCHET, p. 298, note 1. The word signifies sometimes a territorial circumscription, sometimes an

authority. The latter is its original sense. Cf. WAITZ, Vol. III, Part II (1883), p. 457, note 3.

<sup>10</sup> There is no reason to believe, however, that this regulation was invariable; but the exceptions prove the rule.

<sup>11</sup> PROU, *De Ordine Palatii*, p. 176.

<sup>12</sup> Capit. 803, § 8; 810, § 15; 819, § 28.



Great, in the *missaticum* of Paris and Rouen the care of coast defenses was enjoined upon the *missi*; while in the Saxon region the duty of protecting the church and its missionaries was a special responsibility. The *missi* were protected<sup>13</sup> by a triple *wergeld*, and armed resistance to them was punishable with death.

With the death of Charles the dangers which the emperor had apprehended manifested themselves: the *missi* soon cease to be solely the organs of the sovereign's will, but develop a growing independence, in compliance with the feudal tendencies of the time. Hardly any institution of the Frankish government shows the personal character of Charles's administration so much as the *missi dominici*. No one, perhaps, knew better than the emperor himself how much public efficiency depended upon personal judgment, will, and energy, and no one, perhaps, appreciated so well how soon the system might run down if allowed to go its own way. The institution of the *missi* was a means to make the emperor omnipresent, and to secure as far as possible the exercise of his personal influence, upon which, in a feudal age, all real authority rested.

Charles the Great had divided the empire into *missi* districts, which were modified as experience or interest dictated. Nothing proves that the circuits as ordained by him were more than temporary.<sup>14</sup> These districts, which are handed down to us in the capitulary of 802, have very different extent from, and are without connection with, ecclesiastical divisions;<sup>15</sup> for example, that of Sens included Sens, Orléans, and a large part of Burgundy as far as Besançon; that of Rheims, the whole of Champagne, the Laonnais, Soissonais, and minor districts; that of Rouen, Maine, and the later Normandy, west of the Seine; while that of Paris included only the neighboring country and Chartres.<sup>16</sup>

Under Louis the Pious early evidences of decline in the efficiency of the *missi* appear.<sup>17</sup> He connected the office with the public assembly, and allowed the participation of the latter in the government of the empire, so that the magnates influenced the choice of *missi*, and connected the position with their own interests. Moreover, Louis inclined to allow the administrative divisions of the empire to follow ecclesiastical or provincial lines;<sup>18</sup> and this territorial coincidence of the central magistracy with lines of ecclesiastical jurisdiction or local influence was a potent factor in weakening the power of the crown. The list of *missi* of 825 shows that the circuits of the *missi*

<sup>13</sup> "Capit. Missis dominicis data," §§ 13, 14. It is obviously almost impossible exactly to enumerate their duties. DE ROYE, *De missis dominicis*, divides their attributes into three classes: justice, police, taxation.

<sup>14</sup> "Rien ne prouve que cette liste de 802 ait une valeur générale."—BOURGEOIS, p. 243.

<sup>15</sup> KALCKSTEIN, *Robert der Tapfere*, p. 123; BEAUCHET, p. 298.

<sup>16</sup> GUÉRAUD, *Essai sur les divisions territ. de la Gaule*, pp. 67, 68.

<sup>17</sup> "Princeps misit legatos suos supra omnia regna sua inquirere et investigare si alicui aliqua injustitia perpetrata esset; et si aliquem invenissent qui hoc dicere vellet et . . . hoc probare potuisset, statim cum eis in provinciam ejus venire praecepit. Qui . . . invenerunt innu-

meram multitudinem oppressorum aut ablatione patrimonii, aut exspoliacione libertatis; quod iniqui ministri, comites et locopositi . . . exercebant. . . . Princeps destruere jussit acta . . . patrimonio oppressis reddidit, injuste ad servitium inclinatos absolvit."—THEGAN, *Vita Ludovici*, chap. 13; *H. F.*, Vol. VI, p. 77; BEAUCHET, p. 324.

<sup>18</sup> *M. G. H.*, *Leges*, I, 1, p. 291, § 29; p. 328, § 1; WALTER, *Corpus juris Germanici*, Vol. I, p. 363, § 25; FLODOARD, *Hist. Rem. eccl.*, Vol. II, p. 18; WAITZ, Vol. III, p. 386; BOURGEOIS, p. 243; SIMSON, *Ludwig der Fromme*, I, pp. 245-7.

The duke of Brittany seems to have been among the earliest to have coerced the king into recognition of him: "regnante . . . Nominoë misso in Brittania" (826-840). *Cartulaire de l'abbaye de Redon (Doc. inédits)*, p. 156; "courante episcopo, Nominoë misso imperatoris in Britannia," Dec., 837, *ibid.*, p. 136.

at that time tended to coincide with dioceses, and that many bishops had become *missi* in their own spheres of authority,<sup>19</sup> while the counts recognized as *missi* are most of them powerful persons within their provinces. Even as early as this the yearly *missi* form a minority as compared with the *missi* permanently established. With the disorder surrounding them and claiming prompt action, Charles's successors felt the need of trustworthy and powerful *missi*; and the principle gradually prevailed of choosing men of distinction within the circuits. The result was that the *missi* were selected from those feudal lords in the locality in which they lived, and thus were tempted to make their administrative circumscriptions a private domain. Abuse of authority on the part of the *missi* is manifested from early in the reign of Louis.<sup>20</sup> The obligation of the people to care for their entertainment and support necessitated definite instructions concerning the services which should be rendered them.<sup>21</sup> At first (819) the furnishing of produce to them was regulated according to their rank, preference being in favor of the bishops; but in 829 it was made alike for all.<sup>22</sup> Particular tasks, such as formerly were given to the ordinary *missi*, fell more and more to the lower class of *missi*, and under special circumstances *missi* extraordinary were sent out. Even Charles the Great had had to resort to this practice, in order to remedy abuse by the regular *missi*.<sup>23</sup> It was necessary, also, to multiply the number of the *missi*, even though the circuits were smaller than formerly.<sup>24</sup> This seemed almost the only recourse of the king in order to arrest development into an independent territorial power. In general, multiplication of their number, a longer term of office, and frequent renewal of the mandates is the practice of the crown toward the *missi* in the ninth century. The emperor in his weakness could not very well prevent nobles, like the Welfs and Adalhard, from remaining in office. Moreover, he probably had not a very great choice of men suitable for office. Localization of authority on the part of the *missi* thus steadily restricted the authority of the crown. By the middle of the ninth century the *missi dominici* had acquired a double position: they were the agents of the king, and at the same time the representatives of the associated nobility.<sup>25</sup> The authority of the *missi dominici* fell to bishops, dukes, and counts in the extent of the jurisdiction of each.<sup>26</sup> The circuits were not administrative districts so much as

<sup>19</sup> *M. G. H.*, *Leges* I, p. 246.

<sup>20</sup> "Commemoratio missis data," 825, *M. G. H.*, *Leges*, I, 1, p. 309; "Cap. de missis instruendis," 829, *ibid.*, Vol. II, 2, 1, p. 7; "Cap. missorum," 829, *ibid.*, p. 9.

<sup>21</sup> "Tractoria," *ibid.*, II, 2, 1, pp. 10, 11; cf. the regulation of Louis II. in Italy (845-50), II, 2, 1, § 15, "Cap. episcoporum papaie edita," "Capit. Serv.," 853, Vol. II, 2, 2, p. 274, § 13.

<sup>22</sup> *Leges*, II, 2, 1, p. 11, "Tractoria."

<sup>23</sup> WAITZ, Vol. IV, p. 477.

<sup>24</sup> KALCKSTEIN, p. 23.

<sup>25</sup> BOURGEOIS, p. 241.

<sup>26</sup> MANSI, Vol. XV, p. 125, *Synodus Carisiaca*: "Antequam censura ecclesiastica, ac legales sententiae hujusmodi praedatores terribiliter et damnabiliter feriant, episcopi quinque in suis parochiis et missi in illorum missaticis, comitesque in eorum comitatibus pariter placita teneant, quo omnes reipublicae ministri et vassi dominici

omnesque quicumque vel quorumcumque homines in iisdem parochiis et comitatibus, sine ulla personarum acceptione et excusatione aut dilatione convenient." Cf. *Leges*, II, 2, 2, p. 286, §§ 4, 5, etc.; "Cap. Carisiac," 857, *ibid.*, p. 268, §§ 3-5, 8-10; "Cap. Suess.," *ibid.*, p. 294; "Adnuntiatio Karoli," 857, *ibid.*, 703; "Cap. Pist.," 862. Cf. DÜMMLE, *Geschichte des ostfränkischen Reiches*, Vol. III, p. 443.

"During this dark and dismal period Carolingian France, almost a sacerdotal commonwealth, was sustained by the hierarchy. . . . The ecclesiastical synods . . . aided the debility or supplied the non-existence of the legislative or judicial powers, preserved good order, watched over public morals, and supported the dilapidated fabric of society."—PALGRAVE, *England and Normandy*, Vol. I, pp. 401-3; cf. PROU, *De Ord. palatii*, introd.; ELLENDORF, *Die Karolinger und die Hierarchie*, Vol. II, chap. 4; BOURGEOIS, pp. 271-83.

natural historical divisions.<sup>27</sup> Bourgeois has shown that this view, which recognizes the early influence of feudalism upon the *missi dominici*, is in contradiction with the generally received opinion. They have been regarded as late as the treaty of Verdun as exclusively the agents of the crown. Gfrörer, for example, relying upon the capitulary of Servais (853), which regulates the function of the *missi* and the extent of their circuits under Charles the Bald, holds that they are still representatives of the crown alone.<sup>28</sup> Wenck, Waitz, and Noorden have shown that this view is extreme and ill-founded; but they are slow to admit the profound influence that feudalism had upon the institution.<sup>29</sup>

Even Dümmler believes the continuity of the institution to have been greater than the evidence would seem to warrant, and somewhat strangely assumes the existence of a regular, general, and powerful administration in the German kingdom<sup>30</sup> from the fact that no mention is made of the sending forth of *missi dominici* in any of the diets of Ludwig the German known to us, Ludwig apparently not having followed out the joint resolutions of the brothers at Meerssen in 847. Now it is undoubtedly true that feudalism east of the Rhine had not advanced so far as in Frankish Gaul; that the administration in Germany still preserved much of the military strength which had been so great in the time of Wittikind; that the crown authority was less opposed by feudal proprietorships; and finally that the alliance between the church and the kingship was more mutual than in the West Frankish Kingdom; and these influences may have had an influence on the preservation of the *missi dominici*, but the assumption of Dümmler seems a bold use of a negative to prove a contention.

The *missi dominici* were not cut off; they disappeared gradually as their authority was intrusted to bishops and usurped by feudal dukes and counts. In the wars of the ninth century an institution which was supposed to be the organ of the sovereign's will inevitably fell to pieces, since a permanent and well-ordered system could not exist in the face of bishops and counts who reluctantly submitted themselves to central control or else openly rebelled. Charles the Bald, in rare moments of calm in his stormy life, had in view a revival of the arrangement of his grandfather; but owing to wars with the Aquitanians, Bretons, Northmen, Bernard of Septimania, Pepin of Aquitaine, and his own brothers, he could not succeed in the first half of his reign. Hence, before 853 the *missi* are seldom mentioned, and then only under special circumstances.<sup>31</sup> But the idea of them was kept alive by need for the services of such officers. The church in particular, as the best representative of law and order in that violent society, frequently demanded the re-establishment of the royal messengers.<sup>32</sup> In December, 844, when Charles was at Vern, between Compiègne

<sup>27</sup> Cf. BOUTARIC, "Le régime féodal, son origine et son établissement," *R. Q. H.*, October, 1875, p. 363.

<sup>28</sup> GFRÖRER, *Geschichte der ost- u. westfr. Karolinger*, Vol. I, p. 486.

<sup>29</sup> WENCK, *Das fränkische Reich nach dem Vertrage von Verdun*, p. 240; WAITZ, *Götting. gelehrte. Anzeiger*, Jahrgang, 1850, Vol. I, p. 31 ff.; NOORDEN, *Hinkmar*, p. 133, note 4. Cf. BOURGEOIS, *ut supra*.

<sup>30</sup> DÜMMLER, *Geschichte d. ostfränkischen Reiches*, Vol. III, p. 443.

<sup>31</sup> *H. F.*, Vol. VIII, p. 439 (843), in Toulouse; *Leges*, II, 2, 1, p. 258; *H. F.*, Vol. VIII, p. 450 (845), in Touraine; *ibid.*, p. 482 (845), in Tours; *ibid.*, p. 509 (850), in Calais.

<sup>32</sup> MANSI, Vol. XV, p. 677, "Pistensis Synodus," II: "volumus ut neglegentia comitis ad nostram notitiam [per episcopos et per missos nostros] deferatur."



and Paris, the bishops presented a petition<sup>33</sup> asking that *missi* from the king, of assured trustworthiness, be appointed who should call to account the lawless and those who set at naught ecclesiastical discipline, and who had long remained unpunished in consequence of the wars. There is some evidence that Charles made an ineffective attempt to comply.<sup>34</sup> The demand was repeated in the next year at the synod of Beauvais, adjourned to Melun, in a petition which gives terrible evidence of the need of restoration of law and order. The clergy demanded that *missi* be appointed to see that the regulations of the church at least be enforced, that restoration be made of the property of the church which had been usurped by violent feudal proprietors, and that lay abbots be suppressed.<sup>35</sup> This naturally aroused the opposition of the nobles, who shut the clergy out of the diet which was held in June, 846, at Epernay.<sup>36</sup> Nevertheless they consented to the appointment of *missi* to execute ecclesiastical ordinances; but this was certainly only a special concession, and not the establishment of a permanent condition of things, for later, at the first diet of Meerssen in February, 847, we find the request repeated that *missi* be sent out to relieve the poor and oppressed.<sup>37</sup> An examination of the articles of this convention confirms the supposition that a re-establishment of the *missi dominici* was necessary, but, inasmuch as their action would have had to be directed against the excesses of the secular lords, effective restoration was not then possible. Hence in the acts of the second diet at Meerssen in the spring of 851 the *missi* are not even mentioned.<sup>38</sup> Not until April, 853, does the demand again occur.<sup>39</sup> This time, for a wonder, the intention was capable of execution. It was not, however, until late in the year that the restoration of the *missi* was realized. In August, at the diet of Verberie on the Oise, the declarations of

<sup>33</sup> *Leges*, II, 2, 2, p. 384, §§ 2, 3: "Tandem igitur ad propriam et ceterorum correctionem conversi quaesumus: ut scelorum patratores et apostolicae disciplinae contemptores missis a latere vestro probatae fidei legatis absque respectu personarum et excaecatione munerum coerceantur, et otio nobis, quantum possibile est, concesso sermo Dei praedicando fructificet et canonum reverenda auctoritas debitum in omnibus vigorem obtineat. In locis sanctis, hoc est monasteriis, alios studio, nonnullos desidia, multos necessitate victus et vestimenti a sua professione deviare comperimus. Quod petimus, ut in omnibus parrochiis directi a vestra mansuetudine religiosi atque idonei viri cum notitia episcoporum scrutentur et corrigant ac singulorum locorum statum vestrae celsitudini et nostrae mediocritati tempore a vobis constituendo renuntient." Cf. epistle of Hinkmar to Rothad of Soissons, SCHÖRS, *Hinkmar*, p. 74, note 7; KALCKSTEIN, p. 126.

<sup>34</sup> Loup de Ferrières in a letter to Bishop Prudence of Troyes (*H. F.*, Vol. VII, p. 485) mentions that he, with the bishop, in April, was made *missus* in the district of Orléans, Sens, and Troyes. In another letter he mentions Charles's defeat at Ballon on November 22, 845, and again alludes to his office. Cf. KALCKSTEIN, p. 126 and note 2; BOURGEOIS, p. 241.

<sup>35</sup> *Leges*, II, 2, 2, p. 403, § 20: "Et ne magnificentiam vestram illuc vestrae dignitati indecens et inhonesta impellet necessitas, quo non trahit voluntas, et partim necessi-

tate, partim etiam subreptione, quia aliter, quam se rei veritas habeat, vobis dictum vel postulatum fuit, maxime quod ad rempublicam pertinuit aut praereptione in beneficiario iure aut in alode absumptum habetur; videtur nobis utile et necessarium, ut fideles et strenuos missos ex utroque ordine per singulos comitatus regni vestri mittatis, qui omnia diligenter inbrevient, quae tempore avi ac patris vestri vel in regio specialiter servitio vel in vassallorum dominicorum beneficiis fuerunt, et quid vel qualiter aut quantum exinde quisque modo retineat, et secundum veritatem renuntietur vobis." Cf. ST. BERTIN, *anno* 846.

<sup>36</sup> *Leges*, II, 2, 2, p. 261.

<sup>37</sup> "Ut in singulis partibus regni missi idonei constituantur, qui querelas pauperum et oppressorum sive quorumconque causas examinare, et secundum legis aequitatem valeant definire." *Leges*, II, 2, 1, p. 69, § 7; cf. *Mitteilungen des Inst. f. österr. Geschichtsforschung*, Vol. XI, pp. 238 ff.; FAUGERON, *Les bénéfices et la vassalité*, p. 28, note 1.

<sup>38</sup> *Leges*, II, 2, 1, p. 73.

<sup>39</sup> "Ut in civitatibus et monasteriis utriusque sexus et ordinis Dei cultus quam proxime fieri posset instauraretur, statuit sancta synodus annitente pio principe, ut *idonei legati* dirigerentur, qui singulorum locorum statum solertissime perscrutarentur; et quae ipsi per se non valerent corrigere, iudicio proxime futuri concilii et potestati regiae revelarent."—"Convent Suess.," *Leges*, II, 2, 2, p. 265, § 6B.

Soissons were proclaimed and accepted even by the secular nobles.<sup>40</sup> In a conference of Charles and Lothar at Valenciennes in November,<sup>41</sup> in relation to the state of the realms, the idea of re-establishing the *missi* was further elaborated. Lothar recommended that peace and justice be secured by sending out *missi* to take measures against robbers, plunderers, and other evil-doers. Charles in his answer alluded especially to the claims and complaints of the church,<sup>42</sup> and emphasized a recurrence to the capitularies of Charles the Great and Louis Debonair—a fact which is significant for the character of later Carolingian legislation. Finally the diet of Servais confirmed the decisions arrived at during the conference of the brothers,<sup>43</sup> and the Franco-Burgundian portion of Charles's realm was divided into twelve *missatica* and *missi* appointed over them.

The time chosen for this restoration was the most opportune of the entire reign of Charles the Bald. An alliance between Lothar and Charles, the peace of Angers with the Bretons, the death of the rebel Lambert in May, 852, and the capture of Pepin in September of that year, left the king without serious anxieties. Not even the Northmen at this time distracted his attention, having been severely defeated on the Epte.<sup>44</sup>

The preamble of the capitulary of Servais expressly states that the predecessors of the king had established *missi dominici* for the service of God and his holy church, and for the maintenance of law and order.<sup>45</sup> Quotations from capitularies of Charles the Great and Louis the Pious are frequent, and Charles assures the new *missi* that, in case they are not in possession of the capitularies of his father and grandfather, they shall receive them from the king's court.<sup>46</sup> In the face of the condition of affairs evidenced by the prohibitions and penalties of the articles, it would seem that the restoration of the *missi* was a desperate expedient. Yet they do not seem to have been an entire failure at once, for in June, 854, at Attigny, new instructions were issued to them by Charles.<sup>47</sup> The sphere of their activity was widened and the number of them increased. It may be supposed that at this time those formerly appointed reported the success of their missions, for their efforts seem to have met with some success, if the revival of commerce may be taken as a test, since we find Charles ordaining new regulations for the protection of trade and for the suppression of counterfeit coin.<sup>48</sup>

<sup>40</sup> *Leges*, II, 2, 2, pp. 267-70; FAUGERON, pp. 39-42.

<sup>41</sup> *Leges*, I, 2, 1, p. 75.

<sup>42</sup> *Adnuntiatio Karoli*, §§1, 2, 4: "Et missi nostri capitula legis et antecessorum nostrorum . . . omnibus ostendant."

<sup>43</sup> *Leges*, II, 2, 2, pp. 270 ff.; KALCKSTEIN, *De Roberte forte*, p. 15; RUDOLPH FOSS in a doctoral dissertation, *De Carlo calvo* (pp. 16, 17), at Halle, early in the last century, was the first to notice the importance of the capitulary of Servais.

<sup>44</sup> KALCKSTEIN, p. 129, note 1.

<sup>45</sup> "Karolus gratia Dei rex dilectis et fidelibus missis nostris per regnum nostrum constitutis salutem. Sicut vobis notum esse credimus, cum dilectissimo fratre nostro Hlothario apud Valentianas locuti fuimus, et communi

consilio cum fidelibus nostris communibus consideravimus, ut inter cetera sanctae Dei ecclesiae et nostri principatus ac regni nobis a Deo commissi negotia necessaria de his, quae subsecuntur, vos specialiter ammoneremus, ut, sicut hic descripta habentur, una cum Dei adiutorio, prout melius potueritis strenue exsequi procuretis et hoc praesentialiter necessarium opus sine aliqua dilatione vel excusatione, sicut in missaticis coniuncti et deputati estis, simul conveniatis et hoc ad perficiendum quantocius inchoetis et, quantum vel qualiter inde factum habueritis, unusquisque vestrum, sicut in missaticis constituti estis, de unoquoque missatico nobis ad colloquium, quod in proximo cum fratribus nostris habebimus, renuntiare procuret."—*Leges*, II, 2, 2, p. 271.

<sup>46</sup> § 11.

<sup>47</sup> *Leges*, II, 2, 2, pp. 277, 278.

<sup>48</sup> § 9.

Waterways, rendered so long unsafe on account of the Northmen, as also those which had been neglected, are ordered to be reopened.<sup>49</sup> Those who by their fief are responsible for the repairing of bridges are called upon to discharge this duty, and the raising of tolls from passing vessels is prohibited. At the same time preparations are made to arrest the incursions of the Northmen and the Bretons.<sup>50</sup> Finally, the *missi* are enjoined to exact the oath of fidelity from all subjects,<sup>51</sup> and there is evidence which proves the execution of this regulation at Rheims.<sup>52</sup> These provisions and the re-enactment of the conclusions of the synod of Soissons of April, 853, in reference to the investigation of church property and the reformation of monasteries show Charles's earnest efforts to bring about better conditions, and the partial, though not thorough, results of the revival of the *missi dominici*.

The practical worthlessness of the oath was to be shown only too soon; yet the intentions of the king are manifest. Aside from the Northmen,<sup>53</sup> nature itself seems to have frowned upon the royal efforts, for pestilence and a hard winter followed (855-56). Moreover, the Northmen renewed their incursions, and on April 18 sacked the city of Orléans after the death of the brave bishop Burchard who came from Chartres to relieve it. There was great discontent throughout the realm owing to the military inability of the crown. Moreover, at this time in the whole Neustrian land, and among the nobility especially, serious opposition to the crown had been developed, which cannot have been without foundation. Charles often proceeded against rebellious nobles, or those who had fallen under his displeasure, without legal forms, and such conduct was not likely to be lightly considered by nobles whose position was built upon privilege and force.<sup>54</sup> In addition, the royal favor extended to the

<sup>49</sup> §§ 2-5.<sup>50</sup> § 6.<sup>51</sup> § 13.<sup>52</sup> *Leges*, II, 2, 2, p. 278; cf. FLODOARD, *Hist. eccl. Rem.*, Vol. III, chap. 26.<sup>53</sup> For the movements of the Northmen during the reign of Charles see RICHTER, *Annalen der deutschen Geschichte*.<sup>54</sup> Charles's high-handed conduct toward Gauzbert of Maine, who was beheaded in March, 853, is a typical example. If we may regard the doubtful word of Ademar (Book III, chap. 18, *M. G. H., Scriptores*, Vol. IV, p. 122), "*Insidiis Namnetensium circumventus*," Gauzbert was accused by the inhabitants of Nantes—or, corresponding more exactly with the words, was delivered into Charles's hands by their stratagem. Gauzbert had formerly been in high honor in far Neustria, owing to the overthrow of Lambert and his brother Werner, and for distinguished service against the Bretons. He was *missus* in Maine and Poitou in 838, serving with Ebroin, bishop of Poitiers (BALUZE, *Misc.*, Vol. III, p. 117; *Gest. Aldr.*, Vol. I, p. 3), and was possessed of great estates on both sides of the Loire. It may be that he was suspected of treacherous action with the Bretons, and, possibly relying on them and his relatives in Neustria, schemed to renew the rôle of Lambert in these provinces. His execution as a punishment for treason at least leads to the conclusion that he was guilty of an important offense. The punishment, however, seems to have been inflicted upon a despotic command of Charles, who executed him without process of law. (Regino, 866, says: "*Jussu Caroli decollatus est*." The phrase *judicium*
*fidelium*, which constantly occurs in the capitularies in procedure against nobles, is not here used, and leads to the conclusion that Gauzbert was executed without process of law. Cf. RICHTER, *Annalen*, p. 350, note; KALCKSTEIN, p. 33; DÜMLER, Vol. II, pp. 394 ff.; BOURGEOIS, pp. 225, 226. But since in case of treason confiscation of the goods of the guilty party followed to the advantage of the crown, it is a not unreasonable presumption that the execution was made in order that Charles might secure possession of the coveted counties of Maine and Nantes; Charles was not the man to scruple at methods, provided the thing in view were desirable. In 861, in violation of his promises at Coblenz, Charles attempted to take forcible possession of the kingdom of his former ally, Charles of Provence, the son of the late emperor Lothar (KALCKSTEIN, p. 73). The enterprise completely failed; but Charles's lust for power challenged his vassals to make sport of law so much the more wantonly since he himself set the example. In 868 Charles deprived one Count Gerard of his goods in order to give them to the Abbot of St. Hilary of Poitiers. Gerard naturally asserted his rights to his own. Undoubtedly the Abbot of St. Hilary could make good use of the new incomes given him, for he had need of every resource against the incursions of the Northmen; but such violent deprivation only antagonized Charles's subjects (*Chron. Sith.*, *H. F.*, Vol. VII, p. 269b; ST. BERTIN, *anno* 868; BOURGEOIS, p. 259). Charles proceeded after similar fashion in 870 with Gerard, count of Provence (ST. BERTIN, *anno* 870; BOURGEOIS, *loc. cit.*). In his efforts to regulate



clergy since 853, which threatened many nobles in possession of church lands by usurpation, had created great discontent among the latter. Hence, with the insecurity of all relations, internal as well as external, the attempt of Charles to help by means of new instructions to the *missi* was abortive. On February 14, 857, an assembly of all lay vassals was summoned at Kiersy. The acts show that at that time much lawlessness prevailed.<sup>55</sup> The direst punishment of the church — ban and outlawry — was threatened for those who disregarded secular and ecclesiastical authority. Bishops, *missi*, and counts are enjoined to take steps against the prevailing robbery. The instructions issued at this diet to the *missi* give power to the priests of each parish to mark evil-doers and report them to the bishops, who, it is to be observed, have become — or, at least, act as — *missi* in their dioceses.<sup>56</sup> This dependence of the secular government upon the organization of the church, while most evident in the case of the bishops, is a general feature of Carolingian administration in the ninth century, and is not confined wholly to the higher classes of officials. There is evidence all along the line that archdeacons, deacons, and even simple priests assume the exercise of police functions. This tendency was furthered by the fact that the church of the time of Boniface and Pepin had laid down the lines of subordinate ecclesiastical divisions according to the divisions of the government; in other words, deaconries and vicariates tended to coincide with counties.<sup>57</sup> In view of this identity, Charles the Great's care to avoid having the *missatica* coincide with the dioceses of his empire probably was a wise precaution to prevent ecclesiastical authority from too easily securing secular sway. Examples are the *pagus Pruvenensis* (Provins), which corresponded to the archdeaconry of Provins; the *pagus Wastinensis* (Gâtinais), which corresponded to the archdeaconry of the same name; the *pagus Milidunensis*, which corresponded to the archdeaconry of Melun — all of them in the diocese of Sens.<sup>58</sup> In the diocese of Chartres, the archdeaconry of Dreux coincided with the county of that name.<sup>59</sup> Similar cases are Brienne<sup>60</sup> and Artois.<sup>61</sup> Sometimes the names, ecclesiastical and secular, might differ, even though the circumscriptions coincided. Examples are the county of Morvois, which was known ecclesiastically as the *doyenné* of Pont-sur-Seine.<sup>62</sup> The case of Meaux is most interesting, for in 813 Charles the Great conferred upon the count of Meaux the authority of ecclesiastical *prévôt* in Quendes and Broussy.<sup>63</sup> Was the act an attempt to check a tendency toward usurpation of the state authority already apparent in the church?

The close co-operation of the secular and ecclesiastical authority is perfectly apparent at this time; but if we read between the lines of these capitularies, especially

feudal law, the king often went to extremes wholly unwarranted by custom, even if not arbitrary in the letter of the law. The law of feudal succession was not firmly established in the ninth century, and a sovereign could always delay, and not infrequently withhold, inheritance. To constitute a strictly legal right, descent during three generations was required. The sons of Robert the Strong and of Ramnulf of Poitou were deprived of their benefices in compliance with this custom. (KALCKSTEIN, *Geschichte*, p. 44.

See the valuable but condensed study of the benefice in the ninth century in BOURGEOIS, pp. 127-36.)

<sup>55</sup> *Leges*, II, 2, 2, p. 285.

<sup>56</sup> §§ 2, 3.

<sup>57</sup> LONGNON, *Atlas historique de la France*, Vol. II, p. 92.

<sup>58</sup> *Ibid.*, p. 107.

<sup>59</sup> *Ibid.*, p. 109.

<sup>60</sup> *Ibid.*, p. 110.

<sup>61</sup> *Ibid.*, p. 123.

<sup>62</sup> *Ibid.*, p. 111.

<sup>63</sup> *Ibid.*, p. 113; cf. *Leges*, II, 2, 2, p. 276, note 90.

that of 853, what becomes more manifest than anything else is the increasing dependence of the crown upon local lords, lay and clerical; or, in other words, the increasing localization of the *missi dominici*. To the capitulary of Servais is fortunately appended a full list of names and places of assignment of those appointed. Careful comparison of these data with allusions in other capitularies, both earlier and later, and in contemporary sources, discloses the significant fact that the same men are to be found year after year exercising authority in the same region, in many cases being the reigning counts or ruling bishops.<sup>64</sup> To demonstrate: We find in Art. 1 that Hinkmar, the famous archbishop of Rheims, Richuin, and Engiscalc are appointed *missi* in Remois, Vouzy, Atenois, Perthois (the upper Marne), Bar-le-Duc, Brie, Châlonnais, and the eastern Soissonais. Hinkmar's name and position speak for themselves. The second was a count in the Remois, and was one of Charles the Bald's faithful vassals. He had fought in Angoulême in 844, when Charles met such disastrous overthrow at the hands of the men of the South under leadership of the renegade Pepin, and was one of the king's ambassadors to negotiate terms of peace and witness the compact between Charles and Ludwig the German at Coblenz.<sup>65</sup> Engiscalc figures as *comes et ministerialis ac fidelis missus noster* at Kiersy in 857.<sup>66</sup>

Art. 2 specifies that Pardulus, bishop of Laon, Altmar, and Theodorich shall be *missi* in the Laonnais, Soissonais, Artois, and Valois. Now a certain count Altmar figured with Odo, the hero of Paris, in the first siege of that city in 882,<sup>67</sup> and frequently appears as one of Odo's partisans. He was lay abbot of St. Medard in Soissons when Odo was merely count of Paris.<sup>68</sup> Was he a son of Charles's *missus* in that region? In the time of Charles the Fat there was a Theodorich who was count of St. Quentin and lay abbot of Morienval in Valois.<sup>69</sup> He also was a partisan of Odo.<sup>70</sup> Is this a similar case? The inference seems justifiable in the light of the prevailing hereditability of fiefs. When we enter the Noyonnais and Vermandois, we find the *missi* to be Immo, the bishop of Noyon,<sup>71</sup> Adalhard, the king's uncle, who is abbot of St. Amand and St. Bertin,<sup>72</sup> and Counts Odelric and Walkand. The text is very impressive here, for one portion of the region of Flanders within the *missaticum* specified is *named after Count Walkand himself*, while the remainder is designated as *the counties of Ingelram*. The latter, according to Dümmler,<sup>73</sup> was chamberlain to

<sup>64</sup> ROZIÈRE, *Recueil général des formules*, Vol. I, p. 182, note, says that one Betto, who figures in a diploma of Charles the Bald of July 12, 854 (*H. F.*, Vol. VIII, p. 532), with the qualification of *vir inluster fidelis noster*, was a *missus dominicus*. This certainly is an error. He is not specified as such in the document, and the only other reference to him is in *M. G. H., Leges*, II, p. 283, where he figures in Charles's *Primum Missaticum ad Francos et Aquitanos directos* (July-September, 856), and here he is not a *missus*, but a courier of the king: "Ista capitula missit rex de Basia [near Amiens] per Hadabrannum et Bettonem."

<sup>65</sup> BOURGEOIS, p. 244, notes 2, 3, 4. See the proofs in *M. G. H., Leges*, II, pp. 279, 283, 284.

<sup>66</sup> *M. G. H., Leges*, II, p. 286.

<sup>67</sup> FAVRE, *Éudes, Comte de Paris et Roi de France*, p. 15, note 5; KALCKSTEIN, *Geschichte des französischen Königthums unter den ersten Capetingern*; BOURGEOIS, pp. 32, 45, 48.

<sup>68</sup> FAVRE, p. 156.

<sup>69</sup> KALCKSTEIN, *Geschichte*, pp. 42-8.

<sup>70</sup> *Ibid.*, pp. 70-77. For his identification with, and distinction from, other counts of the same name, see the very complete description in FAVRE, p. 95, note 5.

<sup>71</sup> See LE FRANC, *Histoire de la Ville de Noyon*, p. 15, note 1; "Bibl. Nat. MS. fr. 8805, fo. 45 . . . donne de nombreux détails sur sa vie."

<sup>72</sup> BOURGEOIS, p. 244; KALCKSTEIN, *Geschichte*, pp. 55, 87, note 1.

<sup>73</sup> Vol. II, p. 112, note 3.

the count of Flanders.<sup>74</sup> In 865 he, with Hinkmar, was Charles's envoy at the convention of Touzy,<sup>75</sup> and figured again at that of Aachen in 870 between Charles and Ludwig.<sup>76</sup> A similar duplication of the name of the reigning count of the *missaticum* is found in Art. 4, where may be read the following excellent proof of the penetration of feudal influences into the Carolingian administration: "Folcoinus episcopus, Adalgarius, Engiscalcus et Berengarius missi in comitatu Berengarii, Engiscalchi, Gerardi et in comitatibus Reginarii."<sup>77</sup> The region comprehended Boulogne and the seaboard of Flanders. Folquin was bishop of Thérouanne.<sup>78</sup> Evidently the *missatica* of Berenger and Engiscalc corresponded to their feudal proprietorships. In the vicinity of Paris, Melun, Senlis, Beauvais, and in the Vexin are Louis, abbot of St. Denis; Ingilwin, in 875 made bishop of Paris;<sup>79</sup> Yrmendfrid, bishop of Beauvais, who once accompanied Hinkmar on a mission to the Aquitanians;<sup>80</sup> and Gozlin, abbot of St. Germain des Prés.<sup>81</sup> Paul, the archbishop of Rouen; Hilmerad, bishop of Amiens; Herlwin, and Hungar are associated in the government of the Rouennais, Ponthieu, and the county of Amiens. In 858 Herlwin countersigned the decisions of the convention of Kiersy,<sup>82</sup> and a year after he inherited the monastery of St. Riquier<sup>83</sup> from his father, Helgaud. That the house was permanently established in the region subsequent history shows. In 925 one Helgaud of Ponthieu, probably grandson of Charles's *missus*, together with Arnulf of Flanders and Herbert of Vermandois, won a signal victory over the Northmen at Eu.<sup>84</sup> In 939 his son, another Herlwin, became embroiled with the count of Flanders, thereby precipitating a war in which Louis IV., Hugh of France, and William Longsword, Duke of Normandy, all became involved.<sup>85</sup> The family of Hungar seems to have been settled there also.<sup>86</sup> The country which later comprised western Normandy—Avranches, Bayeux, Cotentin, Coutances, Lisieux—fell to Evrard, bishop of Lisieux, and Theodorich (who is called an abbot, but who cannot be identified), another Herlwin, and a certain count Hardwin, whose county bears his name.

The circuits of 853 were ordinarily much smaller than those of 802 or 825, but the area which was intrusted to Dodo, bishop of Angers, to Osbert, and the famous Robert the Strong, was very large indeed, including the counties of Maine, Anjou, and Touraine, beside Corbonnais, the later Perche, and the district of Séez. Robert

<sup>74</sup> "Flandriae comerarium et consiliarium secretis."—*M. G. H.*, *Leges*, II, p. 165 pref.

<sup>75</sup> *Ibid.*, 2, 1, p. 265.

<sup>76</sup> *Ibid.*, p. 192.

<sup>77</sup> *Leges*, II, 2, 2, p. 275, Art. 4; Adalgar appears in the *Cap. ad Francos et Aquitanos* of July 7, 856 (*Leges* II, 2, 2, p. 279). Cf. SIMSON, *Ludwig d. Fromme*, Vol. II, p. 158, note 1. Berengar figures there several times in 856 (*Leges*, II, 2, 2, pp. 279, 283, 284). There was a "Berengarius filius Gebehardi comitis pagi Loganaha" (*ibid.*, p. 154), who signed the convention of Coblenz in 860 (cf. STEIN, *Konrad*, I, p. 44).

<sup>78</sup> *Cartularium Sithiense*, ed. GUÉRAUD, Vol. III, p. 92.

<sup>79</sup> *Leges*, II, 2, 2, p. 275.

<sup>80</sup> BOURGEOIS, p. 245.

<sup>81</sup> *Ibid.*; cf. *Leges*, II, 2, 2, p. 275, note 52.

<sup>82</sup> *Leges*, I, 2, 2, p. 458.

<sup>83</sup> *H. F.*, Vol. VII, p. 244; *Leges*, II, 2, 2, p. 275, note 60.

<sup>84</sup> FLODOARD, *Annales* anno 925.

<sup>85</sup> See LAIR, *Étude sur la vie et la mort de Guillaume Longue Épée*, p. 33; LABUTTE, *Histoire des ducs de Normandie*, chaps. 2, 3. Hungar may have been the brother of the later Helgaud; more probably, however, a brother of Herlwin I., since the name appears as late as 921 (KALCKSTEIN, *Geschichte*, p. 170, note 1).

<sup>86</sup> A certain count Hungar in 921 forcibly acquired the abbey of St. Valéry in the diocese of Amiens (*Gallia Christ.*, Vol. IX, p. 1235), and Rudolph's successor in St. Riquier and probably in his county, Helgaud, had a son named Herlwin. Cf. KALCKSTEIN, "Abt Hugo," p. 43, note 2.



the Strong was already at this time *rector* of the abbey of Marmoutier,<sup>87</sup> subsequently lay abbot of St. Martin in Tours, and in 861 was made margrave of Anjou, where he laid the foundation of the future greatness of the dukes of France.<sup>88</sup> The circumstance is interesting as affording evidence that thus early the future march of Anjou is foreshadowed. Osbert probably was a Poitevin. In 889, in the reign of Odo, that king restored the territory of Doussai north of Poitiers to the monks of St. Martin. This domain had been wrested from them in a former time, in all likelihood during the time of Robert the Strong, for Charles the Bald in 862 ordered its restoration. The intention was defeated, however, by a certain count Magenarius, whose son, Osbertus, retained it in Odo's time. Was Charles's *missus*, Osbert, the colleague of Robert, the brother of Magenarius, who named his son after him?<sup>89</sup>

The *missi* in the Orléanais, Vendôme, Dreux, and in the region of Chartres cannot be identified, save in the case of Burchard, bishop of Chartres. The Rodolph named as his associate probably was the Welf, cousin of Charles the Bald,<sup>90</sup> but there is no proof of it. We have fuller information regarding Wenilo, archbishop of Sens, and his colleagues, Odo and Donatus. Odo was count of Troyes, and possessed other proprietorships in the valley of the upper Seine.<sup>91</sup> He seems to have been an active agent of the king, for he is thrice mentioned in legislative acts as *missus*,<sup>92</sup> until he joins the standard of Robert the Strong in the great rebellion of 858-61.<sup>93</sup> Donatus was count of Melun.<sup>94</sup> The Burgundian counties of Autun, Tonnerre, Maconnais, Beaune, etc., were under the direction of Tutbold, bishop of Langres; Jonas, bishop of Autun; Abbon, abbot of St. Germain d'Auxerre, and the local lords Isembard and Daddo, the former of whom was feudal proprietor in a county of his own name. The diocese of Nevers was the only *missaticum* in which a bishop was not appointed. The circumstance, however, was wholly exceptional, since at the time of the diet of Servais the see was vacant, the bishop having been suspended in April of that year and the ecclesiastical government put provisionally into the hands of his metropolitan, the archbishop of Sens.<sup>95</sup> In Nevers, Auxerre, and Avallon only one of the appointees of Charles can be traced. This is Hugh, who was Charles's own cousin, being son of Conrad the Welf, and nephew of the brilliant empress Judith.<sup>96</sup> The family possessed extensive proprietorships in the region.

The geographical analysis of these assignments made by Charles the Bald is as interesting and instructive as the personal data. The intimate association of the civil and ecclesiastical institutions to form almost one united fabric of government is made strikingly apparent. It was natural that the lines of the *missatica* should tend to

<sup>87</sup> *H. F.*, Vol. VIII, p. 520.

<sup>88</sup> FAVRE, *Études, roi de France*, p. 1.

<sup>89</sup> *Ibid.*, p. 126.

<sup>90</sup> KALCKSTEIN, "Abt Hugo," p. 4, in *Forschungen für deutsche Geschichte*, Vol. XIV, p. 41, thinks it probable (*wahrscheinlich*) that the elder Rudolph is meant; *contra*, BOURGEOIS, "Hugues l'abbé," in *Annales de la Faculté des Lettres de Caen*, No. 2 (1885), p. 66; *Capit. de Kiersy*, p. 245.

<sup>91</sup> KALCKSTEIN, *Robert der Tapf.*, p. 56, note 5; "Abt

Hugo," p. 44 and notes; BOEHMER-MÜHLBACH, *Regesta*, Numbers 1581, 1613, 1720; NOORDEN, *Hinkmar*, p. 143, erroneously identifies him with Odo of Blois.

<sup>92</sup> *H. F.*, Vol. VII, pp. 109, 133, 560.

<sup>93</sup> KALCKSTEIN, p. 56, *op. cit.*

<sup>94</sup> *Ibid.*, p. 57.

<sup>95</sup> *Leges*, I, 2, 2, p. 416.

<sup>96</sup> KALCKSTEIN, *op. cit.*, p. 41; BOURGEOIS, *Capitulaire de Kiersy*, pp. 99-102; "Hugues l'abbé," p. 64.

coincide with the administrative divisions of the church. And yet the king does not servilely make the new civil circuits conform to episcopal jurisdictions. In fact, he shows a greater independence than one might be led to expect. The first *missaticum*, while it chiefly corresponded to the dioceses of Rheims and Châlons, included two portions of that of Soissons, namely, the county of Binson, corresponding to the archdeaconry of Brie,<sup>97</sup> and the western part of the county of Tardenois.<sup>98</sup> The most notable variation, however, is in the case of Bar-le-Duc, which ecclesiastically depended upon the bishopric of Toul, *a diocese in the realm of Lothair I.*<sup>99</sup> Here the unity of the ecclesiastical organization, whose influence is superior to dividing lines as important as those separating kingdoms, re-enforces the theory of government espoused by the Carolingian kings, who looked upon themselves as ruling states, separate indeed, yet vaguely united into one common whole, and governed according to a joint family compact.<sup>100</sup> The third *missaticum* included the whole of the diocese of Noyon, with portions of the diocese of Tournai (Coutrai),<sup>101</sup> and Cambrai (Arras), in Roman and early Merovingian times an episcopal city, but which was subordinated in the sixth century, and did not secure ecclesiastical autonomy until 1073.<sup>102</sup> The jurisdiction of Folquin of Théroutenne *may* have included bits of the diocese of Tournai. It is not possible to determine with certainty whether the *pagus Mempiscus* at this time pertained to the bishop of Tournai or the bishop of Théroutenne.<sup>103</sup> The eighth territorial provision is of double interest: in the first place the jurisdiction appertained to Robert the Strong; secondly, the capitulary of Servais of 853, which instituted the *missaticum*, also established the diocese of Sééz. The ecclesiastical jurisdiction of this territory was withdrawn from the bishop of Bayeux, while civilly it was cut off from the *pagus Oximensis*. Both territories were originally simple *centenæ*, now become of greater importance owing to the rebellious Breton and invading Northman.<sup>104</sup>

The ninth *missaticum* is, except the first, the most notable departure from ecclesiastical lines. It includes the whole of the dioceses of Chartres, Evreux, and Orléans, but is enlarged by the *pagus Castrensis*, which was ecclesiastically a dependency of the bishopric of Paris, by Brienne, and the tri-county Arcis-sur-Aube (*tres Arcisii*), which was ecclesiastically subject to the bishop of Troyes,<sup>105</sup> and by the *pagus Stampensis* (Étampes), which was a subdivision of the archbishopric of Sens. The fact that Charles made his most notable departures from the form of the dioceses in the case of the two greatest metropolitan sees, which at the same time were ruled by two such notable churchmen as Hinkmar of Rheims, and Wenilo of Sens, argues for great accord between king and prelates, or else considerable determination on the part of the king in his conduct toward the church and its dignitaries.

For five years the institution of the *missi* in its revived and semi-feudal form

<sup>97</sup> LONGNON, *Atlas historique*, text, p. 121,

<sup>98</sup> *Ibid.*, p. 120.

<sup>99</sup> *Ibid.*, p. 117.

<sup>100</sup> "Foedera, pacta inter regem et ejus fratres, aut nepotes, aut fideles." Cf. FAUGERON, *De Fraternitate seu Conloquiis inter Filios et Nepotes* (842-84), especially chap. I.

<sup>101</sup> LONGNON, *op. cit.*, p. 124.

<sup>102</sup> *Ibid.*, p. 123.

<sup>103</sup> *Ibid.*, p. 125.

<sup>104</sup> *Ibid.*, p. 100 and note 2.

<sup>105</sup> *Ibid.*, p. 110.

existed. But in 858 a great feudal revolt shook the West Frank realm to its foundations, and almost all the attempts from 853 to 857 for a betterment of the administration fell to the ground. With the insecurity of all relations, internal and external—for Charles's brother Ludwig conspired with the Neustrian nobles and the Northmen penetrated the environs of Paris—the attempt of the king to help matters still by instructions to the *missi* was utterly ineffective. Numbers of them, like Robert the Strong, were in the ranks of his enemies. The church's demand (June, 859, at the synod of Savonnières<sup>106</sup>) for their appointment still was abortive, and the declarations following the reconciliation of Coblenz between Ludwig and Charles remained nothing but ineffectual statutes.<sup>107</sup> At last the defection of Ludwig the German and the intervention of the church, which threatened a general interdict, led most of the revolted nobles to return. All who repented of their conduct toward God, the church, and the king, and who promised to keep peace in the future, were reinstated in their fiefs with the exception of those fiefs which had been the king's own gift. In order to establish peace, Charles commissioned special emissaries (*missi minores* or *discurrentes*) to publish the provisions of the peace. Revolted vassals were to take the oath of fidelity to the king in person, lesser vassals to the *missi*, who were to make known the names of those who responded and those who refused to come. An abstract of certain of the ordinances of Charles the Great and Louis the Pious against spoliation of churches and monasteries, robbery, and theft was given to the commissioners for proclamation. The *missi minores* were enjoined to make use of the advice and aid of the *missi majores*, to whom, on account of the wide extent of their mandate, only supervision and guidance could be given.<sup>108</sup>

The coinage act of July, 861, at Kiersy<sup>109</sup> shows, however, the uncertainty of law and the violence of the time. Nevertheless, Charles still enjoined upon bishops and *missi* to see to it that robbers and rebellious vassals be brought to account and punished according to the laws enacted in 853 at Servais. But the laws were ineffective against the great evils of the time, and were perverted for purposes of oppression by self-seeking officials. The country was impoverished by reason of the incursions of the Danes and the pillaging of the defenseless people of the land by a riotous baronage. Deep distrust prevailed against all organs of the administration, and

<sup>106</sup> *Leges*, II, 2, 2, Art. I, p. 449.

<sup>107</sup> *Ibid.*, pp. 297-301; FAUGERON, pp. 52, 53.

<sup>108</sup> DÜMLER, Vol. III, p. 444, note, is inclined to think the difference between regular *missi dominici* and *missi discurrentes* was one of degree only. Cf. also FICKER, *Forschungen*, Vol. II, §§ 267 ff. It is often impossible to separate the two classes. The order issued to one may be couched in the same form as that issued to the other. Ordinarily, however, the *missi discurrentes* had less executive power, although there was no definite limit to their competence, either in the spirit of the times or in the mandate itself. "De his interim *missi nostri discurrentes cum consilio majorum missorum*, ut praemisimus, studeant, donec plenitudinem capitulorum et adnunteandam et observandam ad communem omnium nostrum salutem et pacem per regnum

nostrum, adjuvante Domino, disponamus." (PERTZ, *M.G.H., Leges*, I, p. 475.) These *missi discurrentes* are not to be confounded with those *missi discurrentes* who were often sent on diplomatic missions of a definite sort. Neither the *legati*, who after the convention of Meersen were sent to the Bretons, to the Danish king, and to the vassals of Lothar hostile to Charles (*Leges*, II, 2, 1, p. 70, §§ 10, 11; ST. BERTIN, *anno* 847), nor the messengers between the brothers ("Conv. ap. Sapon., November, 862," *Leges*, II, 2, 1, p. 164, § 3; "Pactum Tuziac, February, 865," *ibid.*, p. 167, § 7, p. 170, § 5; "Cap. Post. Conv. Confluentium," *ibid.*, 2, 2, p. 297; cf. pp. 193, 301; § 7, p. 860; ST. VAAST, *anno* 888), were true *missi dominici*, nor yet *missi discurrentes* of an executive sort.

<sup>109</sup> *Ibid.*, 2, 2, pp. 301.



even against the king himself. Repeated ordinances in regard to coinage indicate that counterfeiting and debasement of the money largely prevailed, and the king himself unfortunately resorted to the same extreme and unjust means. The text of the capitulary of Pistres in 862<sup>110</sup> is most significant in these particulars. The very reading of this capitulary confirms a conviction of its ineffectiveness. Sounding allusion by the king to the legislation of the great Charles, and to his own earlier legislation, was of little avail with the barons who fattened on plunder.

But in 864 king, clergy, and nobles, for a wonder, were in harmony. Even Aquitaine, for a short season, was quiet.<sup>111</sup> Charles, whose spirit was not as weak as ordinarily supposed, again attempted to rise superior to events. For the first time in a long while a general diet was summoned and could convene at Pistres in June. Thither Solomon of Brittany sent his tribute, and thither the nobles brought their annual gifts. Mahomet, emir of Cordova, in the autumn of 863 had sent an embassy for the purpose of negotiating a treaty of friendship, and rich presents were now exchanged. Thus even on the far southern frontier danger was allayed. The address of Charles to the *missi* on the 25th of this month is in contrast to the complaining tone of that of two years earlier. The prevailing peace made the king ambitious again to restore the ancient Carolingian administration, and certain of the articles of the diets of 853 and 857 were reiterated.<sup>112</sup>

Nevertheless, a thorough improvement of conditions was impossible, even with extensive regulations and resort to drastic penalties. The building of "adulterine" castles and the degradation of the free class continued. There is evidence, however, as late as 865, that the institution of the *missi* was effective in parts of the realm, especially in Burgundy, for in February of that year, owing to the lawlessness in that country, Charles sent *missi* thither, no one of whom is to be found in the roll of those appointed at Servais in 853. One of them was Fulk, probably Charles's *Pfalzgraf*,<sup>113</sup> the other, Gozlin, was in all likelihood the chancellor of that name. Both of them stood high in the king's regard. There is no evidence that they possessed a power in the region, and the character of their mandates indicates that the division of 853 into two districts still prevailed here.<sup>114</sup> The apprehension the crown felt in the appointment of local counts as *missi*—a practice which it dared not disavow without danger of feudal rebellion—united with the growing police authority of bishops and abbots,<sup>115</sup> inevitably led, however, to the gradual discontinuance of the *missi dominici*. In virtue

<sup>110</sup> *Leges*, II, 2, 2, p. 302.

<sup>111</sup> Most of the revolted seigneurs in Aquitaine by this time had been granted amnesty save the renegade Pepin, who, in company with a band of Northmen, sacked Poitiers and Clermont, and even attacked Toulouse. But this was Pepin's last exploit. He was entrapped in an ambuscade by Count Ramnulf of Poitou, the leader of the king's party in Aquitaine, and sent a captive to Charles. In the diet at Pistres (June, 864) Pepin was condemned to death as a traitor to the state and a foe to Christianity. Charles, however, commuted the sentence to imprisonment at Sen-

lis, where soon after (in 865) Pepin terminated his checkered career.

<sup>112</sup> *Leges*, II, 2, 2, p. 310.

<sup>113</sup> On the tendency of the *Pfalzgrafen* to supplant the *missi*, see SOHM, p. 504.

<sup>114</sup> *Leges*, II, 2, 2, § 13, p. 331; cf. KALCKSTEIN, p. 99.

<sup>115</sup> Cf. "Edict Pist., 869," *Leges*, II, 2, 2, p. 334, §§ 5-9, § 12, p. 334. There is evidence of abuse of power even by them, however.

of a practice long established,<sup>116</sup> and confirmed by the king,<sup>117</sup> the bishops exercised not only a general jurisdiction over clerks, but had civil and criminal jurisdiction within their dioceses.

Occasional references to the *missi dominici* as a distinct feature of the administration are to be found throughout the reign of Charles the Bald. In 873 they are mentioned;<sup>118</sup> in 874 the synod of Attigny petitions that *jussio regia haec per fideles missos diligenter ac veraciter inquirere jubeat*;<sup>119</sup> in 875, in a preamble, we find reference to "faithful *missi*;"<sup>120</sup> in 876 the statement is reiterated that each bishop is *missus* in his diocese;<sup>121</sup> in 877 it was ordered that the danegeld be paid to them;<sup>122</sup> in 878, when Louis II. lay ill at Tours, a few forlorn *missi* were sent forth.<sup>123</sup> But the allusions inevitably indicate a tendency on the part of the *missi dominici* toward territorialization of their duties and power. In 882, at the council of Ste. Nacre at Fismes, in the diocese of Rheims, the *missi* are enjoined to be zealous in the protection of church property.<sup>124</sup> In 884 the last isolated recognition of the *missi dominici* as a governmental institution in the West Frank monarchy is found in the capitulary of Vern.<sup>125</sup> The dignity of the title, however, is diminished. The word is applied as a sort of police title to certain presbyters (*strenuum et prudentem presbyterum*)<sup>126</sup> chosen as the bishop's constable in the maintenance of law and order.<sup>127</sup> They are enjoined to co-operate with bishops and abbots in suppression of those remote bands which were desolating the country; to seek to check usurpation on the part of the strong, which tended to diminish the number of royal vassals and freemen; and to

<sup>116</sup> *Leges*, II, 2, 2, p. 268, §§ 3-5, 8-10; "Cap. Suess." (853), *ibid.*, p. 285, §§ 4, 5; "Cap. Carisiac" (857), *ibid.*, p. 294; *Adnuntiatio Karoli*, "Conv. ap. St. Quintum" (857); *ibid.*, p. 309, ll. 34 ff., "Cap. Pist." (862).

<sup>117</sup> "Edict. Pist." (864), *Leges*, II, 2, 2, p. 312, §§ 2, 3; cf. confirmation of Louis the Stammerer (881), *ibid.*, p. 373, § 5: "Episcopus, in cuius parochia aliquis consistens aliquid deprædatus fuerit, semel et bis atque tertio, si necesse fuerit, vocabit illum sua admonitione per suum presbyterum canonice ad emendationem sive ad compositionem et ad poenitentiam, ut Deo et ecclesiae satisfaciat, quam laesit." Cf. Declaration of the council of Tribur (895), *ibid.*, p. 215, § 3. In Italy in 876 each bishop was made a *missus* in his diocese. (*Leges*, II, 2, 1, p. 103, § 12.)

<sup>118</sup> *Ibid.*, 2, 2, § 1, 2, 9-12, p. 343.

<sup>119</sup> *Ibid.*, p. 460, ll. 26, 27.

<sup>120</sup> *Ibid.*, p. 458.

<sup>121</sup> *Ibid.*, 2, 1, p. 103, § 12.

<sup>122</sup> "Ut de mansis indomnicatis solidus unus, de unoquoque manso ingenuili IV denarii de censu dominico et IV de facultate mansuarii, de manso vero servili duo denarii de censu dominico et duo de facultate mansuarii, et unusquisque episcopus de presbyteris suae parochiae secundum quod cuique possibile erat, a quo plurimum quinque solidos, a quo minimum IV denarios episcopi de singulis presbyteris acciperent et missis dominicis redderent. Sed et de thesauris ecclesiarum, prout quantitas loci exstitit, ad idem tributum exsolvendum acceptum fuit. Summa vero tributii fuerunt quinque milia librae

argenti ad pensam."—*Leges*, II, 2, p. 354, note; cf. *Ann. St. Bertin*, anno 877.

<sup>123</sup> "Plaid tenu à Tours par les *missi dominici* (29 Mai 878) au sujet des réclamations faites par Adalmarus avoué des chanoines de St Martin contre le chapitre de St. Maurice:"—Ante Theodacrum et Aladardum locum tenentes vice Reginarii, comitis Palatii, Adalaldum Turonensem archiepiscopum, cum aliis missis praeteritis, etc. MABILLE, "Les invasions Normands dans la Loire, et les pérégrinations du corps de St. Martin: Pièces justificatives," *Bibl. de l'Éc. des Chartes*, sixth series, Vol. V, p. 427. Cf. KALCKSTEIN, *Abt Hugo*, p. 85.

<sup>124</sup> *Leges*, II, 2, 2, p. 372, §§ 2, 3; PROU, *De Ordine palatii*, p. 14, note.

<sup>125</sup> *Leges*, II, 2, 2, §§ 2, 3, 11, p. 371. In Lorraine in 911 Reginar of Hainault boasts himself to be "comes ac missus, dominicus nec non et abba stabulensis atque Malmundariensis monasteriorum." (DÜMMLER, *de Arnulfo Francorum rege*; cf. *Geschichte des ostfränk. Reiches*, Vol. III, p. 571, note 2.)

<sup>126</sup> PERTZ, *M. G. H.*, *Leges*, I, pp. 551-3, § 6: the seventh article provides that "in vicis autem et villis longe a civitate remotis, constituat unusquisque episcopus reverendos et cautos et prudentia (morum) temperatos presbyteros, qui sua vice superius statuta (modeste) perficiant, et ad quos alii presbyteri juniores et minus cauti suam causam referant."

<sup>127</sup> "Sed causam suam ad illum presbyterum referant qui episcopi missus est," etc. (*Ibid.*, § 14.)

protect the royal domain and the lands of the church. Injunctions borrowed from former capitularies are reasserted. It is plain that the *authority* of the former *missus* is enjoyed by the bishop, and that the title has degenerated in dignity and power, and is shortly to disappear.<sup>128</sup>

In Germany the fate of the *missi dominici* was the same as in Gaul, but the evidence of the decline is not so full. Counts palatine, feudal proprietors, churchmen, push their way into the administration.<sup>129</sup>

In Italy<sup>130</sup> the influence of feudalism upon the *missi dominici* was similar in effect to that in France, but the decline was slower. Contrary to the case in France, where not even the name of *missus* was perpetuated, in Italy the name survived down to the eleventh century, but it occurs in such connections as to show that the power of the office had become merged with the power of a local lord.<sup>131</sup>

The strength of character of the emperor Louis II. was greater than that of his uncle in Frankish Gaul, and seems to have had a more deterrent influence upon the operation of feudal forces, and for a longer period the administration of the *missi dominici* in Italy seems to have been fairly efficient. As late as 858 the old alternation of *missi* obtained at least in part.<sup>132</sup> The case must have been the exception rather than the rule, however, for the tendency to appoint local counts and bishops as *missi dominici* is apparent in Italy as in France, though every bishop was not authorized to act as *missus* in his diocese until 876.<sup>133</sup> Despite this lateness of the recognition of episcopal superiority, however, when compared with the situation in Frankish Gaul, feudal and ecclesiastical invasion of the imperial prerogative had begun early in Italy. Sohm cites an instance in the year 827 and others in 833, 840, 857, and 873, which show that in Lucca the local count had successfully trespassed upon the jurisdiction of the *missus*.<sup>134</sup> Similar examples are in 827 at Turin,<sup>135</sup> and 840 at Trient.<sup>136</sup>

Nevertheless the ascendancy of the clergy in the government of Louis II. was slower of attainment than in the West-Frank monarchy, and there is a more cautious disposition on the part of the bishops to insist that a prior right of correction be given to the church.<sup>137</sup> In spite of a pope like Nicholas I., we find Louis II. in 865 declar-

<sup>128</sup> The synod of Attigny in 870 accurately stated the reasons for the decline: *Leges*, II, 2, p. 459: "Quia vero longum est istos ad praesentiam regis adducere vel periculosum est longius a marcha eos abducere, dominus rex commendabit suo marchioni, qualiter eos distringat atque castiget."

<sup>129</sup> Cf. the count palatine Timo and other *Pfalzgrafen* cited in DÜMMLER, Vol. II, p. 441-4: *e.g.*, the case of Kerold comes seu *missus regis* (anno 851), *ibid.*, Vol. III, p. 444, note; or *missum nostrum Gunzonem venerabilem episcopum* (of Worms), Mühlbacher, 1393; or in *Pannonia Odolricus comes noster et missus*, *ibid.*, 1402-3; SICKEL, *Beiträge*, Vol. II, p. 158. In a document of April 25, 865, pertaining to Lorsch, Ludwig's *missus noster*, Herlewinus figures as count of the Rheingau (DÜMMLER, Vol. III, p. 444, note).

<sup>130</sup> On the whole subject of the *missi dominici* in Italy see FICKER, *Forschungen*, Vol. II (1889).

<sup>131</sup> VIOLLET, *Institutions politiques de la France*, Vol. I, p. 307, note 2.

<sup>132</sup> SOHM, p. 499, note 7; MURATORI, *Antiq.*, Vol. III, col. 1033.

<sup>133</sup> M. G. H., *Leges*, II, 2, 1, p. 103, § 12; cf. FICKER, *Forschungen zur Reichs- und Rechtsgeschichte Italiens*, Vol. II, §§ 218-29. The wording is: "Episcopi singuli in suo episcopio, missatici nostri potestate et auctoritate fungantur."

<sup>134</sup> SOHM, p. 496, note 56.

<sup>135</sup> *Ibid.*, p. 454, note 191.

<sup>136</sup> *Ibid.*, p. 496, note 63.

<sup>137</sup> Cf. "Capit. Episcoporum Papiae edita 845-50," *Leges*, II, 2, 1, p. 81, §§ 2, 14,



ing the direct dependence of the *missi dominici* upon the emperor.<sup>138</sup> The emperor's wish, however, was better than his will. While he kept his hand more firmly upon the public administration than Charles the Bald, he had to use the bishops in civil capacities to such a degree that in the space of twenty years the church had largely won the contention cautiously advanced in 845-50. The bishops increasingly were made *missi* within their dioceses,<sup>139</sup> and finally, as said, in 876 the rule was made universal for Italy.<sup>140</sup> Late examples of partially dependent *missi* in Italy are to be found in the reigns of Charles the Fat, in the year 880,<sup>141</sup> when the Carolingian ruler, returning to Worms to hold a diet, assigned the protection of Rome to John, bishop of Pavia, as imperial *missus*,<sup>142</sup> and of Berengar I. (888).<sup>143</sup> As in Gaul, the administration of the *missi dominici* in Italy at last succumbed to feudal influences and only the personal force and energy of the ruler availed to delay its decline. After 876 the bishops in the main perpetuated the office and wore the title without control by a superior authority.<sup>144</sup> During the chaotic period of Lambert, Hugh of Burgundy, and the Tusculan ascendancy in Rome, every reminiscence of the office seems to have vanished even in the case of the bishops. The power of the office was lost beyond recovery in the maze of things local and feudal.

The institution created by Charles the Great, after a century of existence, disappeared in the midst of civil troubles and foreign invasions. In proportion as the *missi* disappeared, the dukes and counts acquired a personal and independent power.<sup>145</sup> In France the short reign of Louis the Stammerer and the minority of his sons, followed by the troubled reign of Charles the Simple and his successors, and in Germany the rule of a little child, afforded an opportunity for them to satisfy their own ambitions. This is not the place to examine the origin and formation of feudal dynasties; but the origin of the power of some of the feudal houses of France in the tenth and eleventh centuries may be traced to usurpation of authority by an ambitious and unscrupulous *missus* of the king.<sup>146</sup>

<sup>138</sup> "Capit. Missorum," *ibid.*, p. 93, § 4.

<sup>139</sup> SOHM, p. 497, note 4.

<sup>140</sup> *Leges*, II, 2, 1, p. 103, § 12.

<sup>141</sup> *Ibid.*, p. 441, § 27.

<sup>142</sup> GREGOROVIVS, *Geschichte der Stadt Rom*, Book V, chap. vi, § 3.

<sup>143</sup> *Leges*, II, 2, 1, p. 146, § 26.

<sup>144</sup> SOHM, p. 497, note 64.

<sup>145</sup> On this development see BONVALOT, *Histoire du droit et des inst. de la Lorraine*, pp. 94, 95.

<sup>146</sup> FLODOARD, Book II, chap. 18; DÜMMLER, Vol. III, p. 571 (Reginar of Lorraine), "comes ac missus dominicus necnon et abba Stabulensis atque Malmundariensis monasteriorum:" from MARTÈNE AND DURAND, Vol. II, p. 38; "Diploma Reginarii" (*anno* 911); BOURGEOIS, pp. 87-97 (Boso of Burgundy); cf. TAINÉ, *Ancien régime*, pp. 7 ff.: "After Charlemagne everything melts away. . . . During half a century bands of four or five hundred brigands sweep over the country, killing, burning, and devastating with

impunity. But by way of compensation the dissolution of the state raises up at this time a military generation. Each petty chieftain has planted his feet firmly upon the domain he occupies, or which he withholds. He no longer keeps it in trust or for use, but as property and an inheritance. It is his own manor, his own village, his own county. It no longer belongs to the king; he contends for it in his own right. The benefactor, the conservator at this time, is the man capable of fighting, of defending others. . . . The noble, in the language of the day, is the man of war, the soldier (*miles*). . . . In the tenth century his extraction is of little account. He is oftentimes a Carolingian count, a beneficiary of the king, the sturdy proprietor of one of the latest free territories. In one place he is a martial bishop or a valiant abbot; in another a converted pagan, a retired bandit, a prosperous adventurer, a rude huntsman. . . . In any event, the noble of that epoch is the brave, the powerful man, expert in the use of arms, who at the head of a troop, instead of flying or paying ransom, offers his breast, stands firm and protects a patch of the soil with his sword. To perform this service he has no need of ancestors."

The slow operation of forces, working not through one, but through two and three generations, united with great and untoward events, like the Northmen invasions, gradually transformed the Carolingian traditions in character and result. By a gradual evolution the political doctrines of the ninth century took shape in the minds of men, who at last came to believe in the usurpation of public powers by particular persons—to believe that society was founded upon contract and guarantees of mutual fidelity; who came, in a word, to believe that the feudal state was *the* state.

# THE ESSENTIALS OF A WRITTEN CONSTITUTION





## THE ESSENTIALS OF A WRITTEN CONSTITUTION

HARRY PRATT JUDSON

SINCE the year of the Declaration of Independence of the United States there have been created a long series of written constitutions. Each of the original thirteen states of the American Union set forth its fundamental law in statutory form during the Revolutionary War. In 1781 the confederated thirteen adopted a definite constitution—the Articles of Confederation—which soon proved most unsatisfactory. After only a half-dozen years under this frame of government the present constitution of the United States was formed. In the century since that time many new states have come into the Union, each with its written constitution, and nearly all the states have several times recast their constitutions entirely. Meanwhile the Latin American republics have come into existence and have framed an interminable list of such documents, all more or less based on that of the United States. In Europe, France began in 1791 with her first written constitution, and has followed that with no less than six others. With the gradual dominance of liberal ideas throughout the continent every other nation but Russia has adopted a similar policy, so that at the opening of the twentieth century the land of the tsar is the only civilized country on the globe which is not governed in accordance with the stipulations of a specific constitutional charter. To be sure, a material part of the British constitution is not reduced to statutory form, but much of it is, and the great British colonies, like Canada and Australia, have in the shape of parliamentary enactment each a quite definite organic law.

The political history of Christendom for the last century, then, has consisted largely in the evolution of constitutional government and the fixing of its principles in statutory documents. These documents have many things in common, and at the same time have many differences. Some constitutions include in detail important matters which others omit altogether. Some are elaborate and comprehensive; others are merely sketchy outlines. Some are well adapted to the social conditions and needs from which they have sprung. Others, adopted by imitation from other countries in which success has been evident, are more or less ill-suited to the people to which they are applied, and are in some cases obvious failures. Still, on the whole it is clear that the modern system of government involves a fundamental law—a constitution—which shall be quite full and precise, and which, therefore, is best reduced to the form of a definite statute.

The purpose of such fundamental statute—in other words, of a written constitution—is security against abuses on the part of those intrusted with political power—whether such abuses arise from design, from incompetence, or from inadvertence. Security is found in great part by specific and easily accessible knowledge as to just

what are the powers which officers of government are entitled to use, and particularly as to the powers forbidden. Of course, to insure protection there must also be provided a means of calling to account officers who may transgress their sphere of authority. Paper restrictions alone are little more than hortatory legislation, and as a rule one cannot rely on them to restrain average human nature.

The officers of government are merely the agents of a power higher than themselves. This power is found in the last analysis to consist in that portion of the community which has supreme political authority—in other words, whose will is law. In every civilized human community there is such supreme authority somewhere. Some portion of the community of necessity rules the whole, and this portion is the sovereign. Sovereignty—final political supremacy—may belong to a single person, in which case the community is a pure autocracy; to a small number of persons, in which case there is an aristocracy; or to a large number of persons, in which case the community is a political democracy. Autocracies are practically obsolete among civilized men today, that of Russia being the only one on a considerable scale, and even that having in practice no small number of limitations on the theoretical supreme power of the tsar.

Aristocracy and democracy, in the political sense, it will be noticed, are merely relative terms. There is no exact point at which a community ceases to be aristocratic and becomes democratic, and it is quite obvious that a community may be aristocratic as respects a second and at the same time democratic in relation to a third. France under the Orleans monarchy vested supreme political power in some 200,000 voters, while under the second empire there were 7,000,000. More than one of the states of our Union at the outset had suffrage laws so restrictive in character that they were decidedly aristocratic as compared with their present status, although undoubtedly democratic in comparison even with France under Louis Philippe.

An organized political community, independent of external control, is commonly called a state. There is, however, often a confusion of thought arising from the more or less unconscious use of the term "state" in two different senses. These two applications of the term should be sharply distinguished, and the distinction kept always in mind.

In the larger sense the state includes the whole community living in a given territory and subject to the political authority of its government. In the limited sense the state includes only that portion of the community which has political authority over the whole, and whose agent in the exercise of that authority is the government. The state in the larger sense we may, for convenience, call the social state. The other may be called the political state. The members of the social state are all subject to law. The political state creates law and enforces it. Political power belongs to the political state, to be sure, for the protection and welfare of the social state. But in the exercise of that power the political state has no legal superior. Its will is law for all.

In defining and restricting the powers of government the political state at the same time secures itself from the results of the abuse of such power, protects a minority



of its own membership from oppression by the majority, and also secures the defenseless non-political portion of the social state from like oppression. Political democracy implies that the political state is a relatively large portion of the social state. The steady extension of suffrage in the states of the American Union has gradually increased the proportional extent of the political state. It goes without saying, however, that even with the adoption of woman suffrage the members of the political state will in a normal society be considerably less than a half of the whole community.

It should be noted that subordinate political communities, in possession, however, of supreme authority over some subjects, are also commonly called *states*—as those of the American Union, those of the German empire, and those of the Commonwealth of Australia. No adequate scientific term has been suggested as a substitute in such cases. One must bear in mind always in which sense the term is employed—the French state meaning one thing, the state of Illinois quite another.

A constitution is adopted by the political state, but always with the aid of a delegated body (a “convention,” it is called in this country), which has greater or less powers in the matter. These powers always include that of drafting a scheme of organic law, and may also include its final enactment. In the latter case the convention is given plenary power.

This latter method is pursued in France under the present constitutional laws. The convention is formed by the union of the two houses of the national legislature in joint session, and the action of this body is final. Thus the constitution of France is amended without the choice of a constituent body *ad hoc*, and without a popular vote on the amendments drafted.

In the states of the American Union a new constitution is uniformly drawn by a convention chosen for the purpose, but it is usual for enactment to be effected by a direct vote of the people.

A full constitution includes, besides the enacting clause and what may accompany it, usually called the “preamble,” four distinct parts.

The first treats of the *social state*; the second covers a definition and scheme of organization of the *political state*; the third, by far the most extensive of all, treats of *government*, including its structure, the powers and duties of its branches and of its officers, restriction on the powers of government, and the sanctions by which government is controlled; the fourth includes a mode of changing the constitution—the *amending* process.

Some of these may be implied, or may be left to the action of the ordinary legislative authorities. Hence it appears that we may have to consider political provisions which are *express*, or *implied*—and others which are *constitutional* or *statutory*.

#### THE PREAMBLE

The only really essential part of a preamble is the enacting clause. This contains the statement by the sovereign authority that the document is made law: “We, the people of the United States . . . do ordain and establish this Constitution.”

Many preambles contain also other matter, especially such as indicate the purposes of the enactment, and in some cases such as express religious faith. In the preamble to the federal constitution of the United States the purposes are indicated: "In order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity." The preamble of the constitution of the state of Illinois, adopted in 1870, runs as follows: "We, the people of the State of Illinois, grateful to Almighty God for the civil, political and religious liberty which He hath so long permitted us to enjoy, and looking to Him for a blessing upon our endeavors to secure and transmit the same unimpaired to succeeding generations in order to form a more perfect government, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the State of Illinois." Here we have, besides the enacting clause, both the expression of religion and the indication of purposes. The constitutions of Louisiana adopted in 1845, in 1852, and in 1864, had this preamble: "We, the people of the State of Louisiana, do ordain and establish this Constitution." This was the mere enacting clause.

#### THE SOCIAL STATE

The extent of the social state is seldom expressly defined in a constitution, as it is plainly enough to be understood from the attendant circumstances. The Illinois constitution has as its first article a definition of the state boundaries, by which is indicated the area covered by the authority of the state (*i. e.*, the political state) of Illinois. The people residing within this area form the social state. The Swiss constitution (Chap. I, Art. I) enumerates the twenty-two cantons of the republic — which in their totality form the confederated social state, as each by itself is the cantonal social state. The German imperial constitution (Art. I) enumerates in like manner the twenty-five states of the empire, and then proceeds (Art. II): "Within this territory the empire shall have the right of legislation according to the provisions of the constitution." Under the war- and treaty-making powers the limits of German jurisdiction have been extended to include Elsass-Lothringen and a number of colonies over sea, thus notably extending the German social state. The Prussian constitution (Art. I) reads: "All parts of the Monarchy in its present extent form the Prussian state territory."

International disputes as to boundaries of course relate to the relative extent of the social states in question, the disputed areas being subject to one or the other legal authority, as the case may be.

The area of the social state is usually divided into convenient portions for governmental purposes. These may be *states* (as in our own republic), *departments* (as in France), *cantons* (as in Switzerland), *crown lands* (as in Austria), *provinces* (as in Canada), or they may have still other designations. All are alike in being more practi-

cable governmental units than the entire nation. They differ only in so far as the organization of the political state differs under different constitutions. There is no common name known to political science by which these primary divisions of the social state may be called. Perhaps for convenience we may indicate them as *primary social groups*.

These primary groups are farther subdivided, also for governmental convenience, into what may we call *secondary groups*—*counties* (in all our states but Louisiana, where they are called *parishes*), *arrondissements*—*i. e.*, “districts”—(in France), and the like. In turn, secondary groups may be subdivided into what may be termed *minor social groups*. With us there are rural groups, *towns*; municipal groups, *cities* and *villages*; special groups, *school districts*, *sanitary districts*, and the like. In France the elementary minor social group is the *commune*, a cluster of which form the *canton*. Of course there are great varieties in the form and nomenclature of these minor groups.

#### THE POLITICAL STATE

The legal qualifications for suffrage mark out the limits of the political state. These qualifications may be embodied in the constitution, or may be left to the discretion of the ordinary law-making power; but in either case they form a most essential element of the organic law. It is the political state which has final authority; which creates and modifies the constitution itself; which directly or indirectly constitutes the personnel of government and enacts ordinary law. It is therefore of prime importance that the membership of this fundamental constituent body of the community should be determined wisely and beyond the possibility of doubt. It would seem, then, that so vital a feature in the commonwealth should be hedged about by every safeguard of the fundamental law. The structure of government itself is surely not more important than the basis on which all government rests.

The French constitution merely requires<sup>1</sup> that the members of the Chamber of Deputies shall be elected by universal suffrage, details being left to statute. The constitution does not define universal suffrage, but existing law (1874) sufficiently defined it as confined to male French citizens not less than twenty-one years of age. Of these in 1880 there were 9,948,000, out of a total population of 37,672,048. Thus in France at that time the political people were at the rate of about 264 to each 1,000 of population—in other words, the political state was 0.264 of the social state.

The German imperial constitution, like that of the French republic, requires that the members of the popular branch of the national legislature shall be elected by universal suffrage,<sup>2</sup> but leaves the definition to statute. In Germany the electoral law fixes the voting age at twenty-five, and limits the suffrage to the male sex. There were in the empire in 1880 9,124,000 qualified voters, out of a total population of 45,234,061. This made the political people of the empire about 202 to each 1,000 of total population—the political state was 0.202 of the social state.

<sup>1</sup> *Loi constitutionnelle*, 25-8 février, 1875, Art. 1.

<sup>2</sup> *Verfassung des Deutschen Reichs*, Art. 120.



The federal constitution of the United States does not define the qualifications for suffrage in choosing the House of Representatives, but leaves the matter expressly to the several states.<sup>3</sup> It follows that the states are free to adopt such varying legislation as may seem to them most expedient, and the suffrage laws differ accordingly. Further, the states may embody these laws in their constitutions, as is the case with Illinois,<sup>4</sup> or may relegate power to the legislature by ordinary statutes. The former, however, is the method preferred. Universal male suffrage, the voting age being twenty-one, prevails in most states. Property or intelligence qualifications are required in a few, and in a small number the sex limitation is waived. On the whole, the political state is not far from a fifth part of the social state.

The organization of the political state is quite as essential as its definition.

In a pure democracy the organization is very simple. The voters gather in one place and need only such officials as may make it possible for the business of the assembly to be conducted in an orderly manner—a chairman, a clerk, and possibly a peace officer to maintain proper decorum. A still more important point of organization, however, is an agreement as to what proportion of the whole number shall, by the common action, be taken as speaking with authority for all. This is usually a majority, although in the Russian village commune unanimity has been required. In the New England town-meeting majority rule has uniformly prevailed.

Large areas and great numbers of people make representative government a necessity, and quite different methods have to be devised for ascertaining the popular will. The political people have to be divided into convenient voting groups and proper devices found for taking the votes and gathering the results. From this necessity have come by gradual evolution our complicated modern election laws, including the Australian ballot and the voting machine. Obviously the debate, which in a pure democracy immediately precedes the vote, must in this other system be disconnected from it, as public organization can hardly go farther than to ascertain the general will after the people have made up their minds. In elections, however, as in democratic assemblies, it is essential that there be a definite agreement as to the proportion of the total vote which shall rule. This may be a plurality, or a majority, or a fraction larger than a mere majority. In most elections in the states of our republic a plurality suffices to elect a candidate to office. The law of Vermont, however, for instance, requires that if no candidate for governor has a popular majority then the legislature in joint session shall choose a governor from the highest three candidates on the list.<sup>5</sup> Rhode Island and New Hampshire have had similar provisions. In California certain questions, such as that of the public ownership of street traction lines in cities, are determined by a vote of the people in the locality concerned, and the proposition to be carried must have two-thirds of all the votes cast on the subject.

But the most vital question relating to the organization of the political state goes

<sup>3</sup> United States Constitution, Art. I, sec. 2, § 1.

<sup>5</sup> Constitution of Vermont, Amendments, Art. IX.

<sup>4</sup> Constitution of 1870, Art. VII.

much deeper than these matters, which after all relate in the main to convenience, and which may be readjusted from time to time without material disturbance. Voting groups and administrative groups may easily be ephemeral. But in each of the social groups above noted there is a corresponding political group, and the radical differentiation of state structures is based on the differences in the powers and status of these political groups. Are the primary groups organized merely for convenience of administration and for convenience of gathering the popular will? In this case they are wholly subordinate to the central government; their existence and functions are statutory. Or are they themselves, as groups, sharers in the supreme authority, the sovereign power, which is at the basis of the state existence? In this case their existence and functions are constitutional; the constitution itself cannot be altered without their consent.

These give the so-called unitary and federal organizations of the political and social state—of the political state as governing, of the social state as governed.

Of the unitary system France is perhaps the best type. The primary groups—the departments—are statutory in their origin and status, and are subject at any time to change at the hands of the central legislature by the ordinary process of legislation.

Still more significant than this is the fact that the departments as such have no voice in the process of constitutional amendment. Change in the organic law is effected in France by a majority vote of a joint assembly of the two houses of the national legislature. The deputies—584 in number—are chosen by a direct vote of the people. Each *arrondissement* has one deputy, and those with a population exceeding 100,000 are divided into two or more districts, each having one deputy. Under the method of *scrutin de liste* which was in force from 1871 to 1876, and from 1885 to 1889, all the deputies from a department were chosen on a general ticket. But in either case, whether the general-ticket plan or the single-district plan is followed, the deputies are chosen directly by the political people, and are in no real sense representatives of the departments as such. The senators—300 in number—are chosen in the departments by a sort of electoral college, the members of which are the deputies from the departments, the departmental and *arrondissement* councilors, and representatives from the communes chosen by the communal councils. This last element is by far the most numerous—considerably exceeding all the others combined, so that the senators really are chosen by the communes. They therefore are not really departmental representatives; they have a fixed term and are paid from the national treasury, like United States senators. The constitution is amended, therefore, by an assembly whose members represent the people as a whole, an assembly a majority of which stands for a majority of the French political people taken in a mass.

This is in principle by no means unlike the system under the second empire. Constitutional revision was then enacted by a direct vote of the electorate. The only difference under the present method is that the people may be said now to vote

indirectly instead of directly on such questions. In either case it is a majority of the whole political people of France which exercises ultimate political authority.

In a state organized on the federal plan, like the United States, the system is radically different. The states, in external aspect much like the French departments, are in fact essentially diverse from them. The test is the enacting of amendments to the constitution. The people are sovereign, we say, and their will is law. By that we mean the political people, to be sure, but not taken in mass, as in France, so that, for instance, a majority of the whole people may adopt an amendment. In enacting constitutional amendments the people are taken by primary groups—states—and a certain proportion of the states is essential to enact, quite irrespective of the popular vote. This is equivalent to saying that sovereignty belongs to the states, rather than to the people of the whole republic in the aggregate. The federal constitution of the United States was originally adopted by the states, has been successively amended by the states, and can be legally abrogated or exchanged for a totally new one only by the states. In other words, it is the will of the states which is the supreme law of the whole republic. This is the essence of the federal system. And in a system in which the states are thus supreme we may well expect that they will reserve carefully to themselves many essential powers, and delegate to the federal government only such as experience has proven to be thoroughly necessary. In France the structure and all the powers of the departments are a mere emanation from the national legislature, which may at pleasure alter these powers, or resume them, or obliterate the department altogether.

In organizing a federal state it at once becomes essential to determine what proportion of the states shall be decisive in enacting the fundamental law, and what shall be the relative weight of the states in taking such action.

In the United States it is settled that no constitutional change becomes valid without the assent of three-fourths of the states, each state having one vote and only one vote, regardless of size, population, or wealth.<sup>6</sup> This is equivalent to saying that sovereignty belongs to the states collectively, the voice of three-fourths being taken as expressing the will of the whole. In this sense, then, it is quite true that the *states* are sovereign; but it does not at all follow that any *one* state is sovereign in the same sense. Sovereignty lies in the states collectively, not severally.

It is about this point of construction that controversy raged throughout the most of our political history down to the time of the Civil War. The great debate in the Senate between Webster and Hayne, in 1830, centered on the issue of the location of sovereignty in the republic. Each with powerful logic maintained a great truth. Each seems to have missed a fundamental principle, which, being clearly apprehended, would have made their doctrines absolutely identical. Each, therefore, went astray at a certain point, and thus reached a conclusion diametrically opposite to that of the other.

<sup>6</sup> U. S. Constitution, Art. V. Even at this point there is one qualification. It is stipulated (U. S. Const., Art. V) that "no state, without its consent, shall be deprived of its

equal suffrage in the Senate." This is practically equivalent to requiring for a constitutional amendment of this nature a unanimous vote of the states.



Mr. Webster maintained that the constitution is supreme law over all, and not merely a compact among equals, and that as law it was ordained by the people of the United States in the aggregate.<sup>7</sup> Mr. Hayne clearly showed<sup>8</sup> that the people of the United States who formed the constitution were considered only as forming the states respectively; that it was therefore the states which united under the constitution which the states ordained. He thence inferred that the constitution was a compact among sovereigns, which retained full sovereignty, including the power to judge of infractions of the federal organic law.

Mr. Webster erred in holding that the "people" who ordained the constitution were the people in the aggregate; Mr. Hayne was certainly right on that point. But Mr. Hayne erred in inferring that the states that gave their assent to the constitution remained thereafter sovereign in the full sense of the term. In fact, they surrendered final sovereignty to the Union, and, so far as powers delegated to the Union were concerned, became subject to the government of the Union, including the final power of the federal court to interpret "the supreme law of the land." Appeal from the government of the Union in all its branches lay to the Union in its constituent capacity, *i. e.*, to the amending power, acting finally by three-fourths of the states. From the decision of three-fourths of the states there can be no appeal but to revolution. Partial sovereignty, if the term is permissible, the states retain in the sense that they have all the residuary powers of government remaining after those delegated to the Union are deducted, and also in that they are equal partners in the sovereign federation, whose will, expressed by the action of three-fourths of their number, is final law for all. It is only in this limited sense that any one state is sovereign. The fallacy of inferring full sovereignty from this partial, or quasi, sovereignty, is obvious. Nullification and secession are revolutionary, and not constitutional, forms of procedure.

In the German federal empire the principle underlying the organization of the political state is essentially the same as in the United States, although the organization differs in form. The states of the empire, like the states of the Union, are sovereign collectively, not severally. The states are directly represented in the Federal Council, a body of fifty-eight members. The members are appointed, not on the principle of equality, as with us, but somewhat in proportion to the importance of the various states. Appointment is by the state governments, tenure is at the will of the appointing power, and votes are determined by instruction from the same authority. Thus it appears that the Federal Council is a permanent convention of states rather than a mere co-ordinate legislative body. The constitution is changed, on recommendation of the Reichstag, by a vote of more than three-fourths of the Federal Council (a proposed change is rejected if there are fourteen adverse votes in the Council).<sup>9</sup>

Practically, then, the federal political state in Germany is organized for the

<sup>7</sup> *Congressional Debates*, Vol. VI, Part I (1829-30), pp. 74, 93.

<sup>8</sup> *Ibid.*, pp. 86, 87.

<sup>9</sup> German Imperial Constitution, Art. 78.

exercise of sovereign power in the Federal Council, acting by more than three-fourths of the voices ; in other words, it requires barely more than three-fourths of the state votes to enact organic law. In the American Union three-fourths suffice. In Germany the states do not vote on the principle of equality. In the American republic this equality prevails.

In the several states of the American Union the political people are defined by state law, usually embodied in the state constitution. Suffrage qualifications vary, but usually include federal citizenship, the age of twenty-one years, the male sex, and a specific period of residence. These qualifications suffice to mark out a portion of the community, rarely exceeding one-fifth in number, who form the political state. Some few states omit the sex qualification, while a few others add restrictions of intelligence or property. In some few states in which these last requirements prevail the existence of a great population, which but a generation ago was servile, results in the placing of legal political power in the hands of a small fraction of the community.<sup>10</sup>

On the power of each state to define for itself the extent of the political state therein the federal constitution lays but one restriction—there must be no deprivation of the right to vote on the ground of “race, color, or previous condition of servitude.”<sup>11</sup> Further, if any qualification is exacted other than federal citizenship, age, and sex, Congress is empowered to reduce the state representation in the House of Representatives proportionally.<sup>12</sup> The restriction of the fifteenth amendment has thus far been rather easily evaded, and the limitation of representation permitted by the fourteenth amendment Congress has never yet put in force.

The organization of the political state in all the states of the Union is on the unitary principle, a majority determining action. New constitutions or constitutional amendments are usually referred to popular vote for enactment. At times, however, in several states, a constitutional convention has assumed full power to enact as well as to frame organic law.<sup>13</sup> The legislature never assumes, and is never granted, such power, and never goes beyond the framing of amendments for submission to the people. In expressing the will of the state on a proposed amendment to the federal constitution, however, the legislature may act with full authority.

In Germany the state governments much more fully represent the sovereign authority of the political people with plenary power. These governments instruct the state representatives in the Federal Council on questions of amendment to the federal

<sup>10</sup>The registration of voters in the state of Louisiana in 1888 was 253,557, of whom there were 125,407 white and 128,150 colored. In March, 1900 (the new constitution by which ignorant and improvident voters were disfranchised was adopted in 1898), the total registration for the state was 130,757, of whom 125,437 were white and 5,320 colored. In the city of New Orleans in January, 1898, the total registration was 87,240, of whom 74,133 were white, and 13,107 colored. In the same city in March, 1900, the total was 39,894, of whom 38,401 were white, and 1,493 colored. It

may be added that under the “grandfather clause” 111 colored people were registered.

For the above facts the writer is indebted to Professor J. H. Ficklen, of Tulane University, New Orleans, La.

The population of Louisiana in 1890 was 1,118,587; in 1900 it was 1,381,625.

<sup>11</sup> U. S. Constitution, Amendment XV.

<sup>12</sup> *Ibid.*, Amendment XIV, sec. 2.

<sup>13</sup> *E. g.*, Illinois Constitution of 1818, Louisiana Constitution of 1898.

constitution—amendment to the state constitutions also are usually enacted by the ordinary legislature, and are never referred to popular vote.<sup>14</sup> The safeguard thrown around Prussian constitutional change lies in the requirement of an absolute affirmative majority in each chamber, and in the further requirement of two separate votes on the question, separated by an interval of three weeks. But after all this plan gives to the Prussian legislature plenary power over the organic law.

The political state is organized for a double purpose. One is to determine the organic law. The other is the enacting of ordinary legislation, the administration of public business, and the due execution of justice. To attain this desired purpose government is created, as the agent, and at the same time as the visible organized form, of the political state, with the organized electorate behind it. The popular house of the legislature is invariably chosen by the popular electorate, and more or less of the remaining government officials may be directly or indirectly constituted in the same way.

The organization of the state for action on organic law, as we have seen in the case of Germany and Prussia and France, may be identical with governmental organization, the only differences made being those relating to forms of procedure, rather than the construction of the organs by which action is taken, *e. g.*, in France organic law being enacted by the two houses of the legislature sitting together in a single body, while ordinary law is enacted by the concurrent action of the two bodies sitting separately. In the United States, however, various attempts have been made to form a representative organization for this purpose more or less distinct from the government.

The ordinary form which this representative organization takes is the constitutional convention.

This body is chosen by the same electorate which chooses the popular house of the legislature. The purpose of the legislature is to formulate, and usually to enact, ordinary law. The purpose of a convention is usually merely to formulate, rarely to enact, organic law.

The federal constitution of the United States was originally formulated by a convention, and provision is made<sup>15</sup> that under specified conditions a convention may be called to formulate amendments. The original constitution was adopted by the states through conventions elected for the purpose, and it is provided that amendments may also, at the discretion of Congress, be ratified by conventions. As a matter of fact a federal convention has not been held since that of 1787, although at several times serious attempts have been made looking toward calling one. Amendments to the federal constitution, also, have thus far been ratified by the states through the ordinary legislative bodies. Thus the federal provision for constitutional conventions seems to be a dead letter.

In the states, on the other hand, the constitutional convention is a familiar fact, the

<sup>14</sup>*E. g.*, Constitution of Prussia, Art. 7.

<sup>15</sup> U. S. Constitution, Art. V.



most of the states having had several. Thus Illinois held constitutional conventions in 1818, in 1847, in 1862, and in 1869-70. New York held conventions in 1776-77, in 1801, in 1821, in 1846, in 1867, and in 1894. It will be noticed how nearly this coincides with Jefferson's view that every generation ought to make a constitution of its own.<sup>15a</sup> In each of these states the first convention enacted the constitution which it formulated, without reference to the electorate, while all formulated since have been referred to popular vote. The constitution framed in 1867 in New York (excepting a single article), and that framed in 1862 in Illinois, were rejected by the electorate.<sup>16</sup>

The Illinois convention of 1862 assumed the peculiar ground that it was the embodiment of the will of the people of the state with plenary power for all purposes, and proceeded to act on a variety of subjects other than framing a constitution. Investigations were set on foot into the operations of the existing state government, several acts of ordinary legislation were adopted, and money to the amount of half a million dollars was appropriated for the relief of wounded Illinois soldiers. These extraordinary powers assumed by this extraordinary convention were undoubtedly null and void.<sup>17</sup>

The convention is a very proper form of organization for framing a complete constitution. It is, however, obviously too cumbersome and expensive a thing for mere amendment, unless, indeed, the amendment in question should be of extraordinary importance. How to provide an organization for this purpose, but distinct from the government, is one of the most difficult problems of political science. In most cases no serious attempt is made to solve it, the power of proposing amendments being given to the legislature. It is not thought that this is a good plan, as the very purpose of the amendment may be further restriction on the legislature—a purpose which that body quite naturally may be reluctant to subserve.

It is clear that in all the methods of initiating action on organic law thus far detailed, at some point the legislature—a branch of government—is permitted to be a factor. This frequently proves an impassable obstacle for measures which the political people may strongly desire. The blocking in the Senate of the United States of a proposition of amendment to the federal constitution looking toward direct election of United States senators is a familiar instance.

American political science has made several experiments in the direction of eliminating, or at least of minimizing, the functions of ordinary legislative bodies as related to action of the state on organic law. Still more has been done in Switzerland in this direction.

The Swiss federal constitution, like the American, provides for proposals of amendment by the federal legislature and ratification by the cantons ("states"). However, there are several other features which are quite unlike the American plan. The Swiss enactment of constitutional amendment is by popular vote throughout the repub-

<sup>15a</sup> *Jefferson's Works*, Vol. III, p. 106.

<sup>17</sup> JAMESON, *Constitutional Conventions*, chap. vi.

<sup>16</sup> POORE, *Charters and Constitutions*; vide New York and Illinois.

lic, and requires at the same time a majority of the entire vote cast and a majority of the cantons. The popular vote on the question in a canton determines the vote of the canton. This dual vote—general and cantonal—takes the place of the American requirement of the legislatures (or conventions) of three-fourths of the states. It may be added that the Swiss method is more flexible than the American, as well as more democratic.

The Swiss federal constitution provides the alternative of a popular initiative in proposing amendments.

Propositions may be made by concurrent vote of the two houses of the federal legislature.<sup>18</sup> On a question of total revision, if one house of the federal legislature approves and the other disapproves, the question whether the constitution shall be revised is submitted to popular vote throughout the republic. In case the majority of those who vote on the question answer in the affirmative, there is a new election of both branches of the legislature for the purpose of preparing the revision—in other words the legislature thus newly elected acts in the capacity of a constitutional convention to draft the amendments.

Also, whenever 50,000 Swiss voters demand total revision, in like manner the question is submitted to popular vote. If the affirmative carries, there is a new election of both branches of the legislature, as above.

On a question of the desirability of partial revision, no resort is made to the people until after petition by 50,000 Swiss voters.

The petition may be in the form of a general suggestion, or of a completed bill. In the former case, if the two houses of the federal legislature agree, they draft an amendment and submit it for enactment in the usual way. If, however, the two houses do not agree, then the people are asked to vote on the desirability of the suggested revision, and if the majority vote in the affirmative, then it becomes the duty of the legislature to draft it.

The petition for partial revision may be in the form of a completed bill. In case the federal legislature does not agree, that body may draft a bill of its own, or may move to reject the bill of the petitioners, and may submit its own bill or motion to reject along with the petitioners' bill.

These rather complicated provisions of the Swiss constitution are intended to prevent an unfriendly legislature from stifling a measure which the people really desire. There is a curious resemblance between the way in which the popular initiative is thus worked out in Switzerland and the way in which the commons of England came to share in actual legislation. The English commonalty originally merely petitioned the crown for a law to produce a given desired result. If the crown was graciously pleased to grant the petition, it was referred to the crown lawyers to embody in the form of a statute. Not infrequently the people afterward found that such statute really evaded the intent of the petition. After casting about for a remedy, the commons found

<sup>18</sup> Swiss Constitution, chap. III, Arts. 118-22, quoted by BORGEAUD, *Adoption and Amendment of Constitutions*, p. 317.

none better than to draw up their petition in the exact form in which they desired it to stand in the statute books, and to insist on the royal assent or rejection without alteration. After a long struggle, the crown reluctantly yielded to this substitute for the old method of petition. Thus was devised the method of legislation by bill. In like manner the Swiss insist that if enough voters agree in demanding a specified amendment to the organic law, they may, if they choose, present their desire in the exact form in which, if adopted, it will stand in the constitution. Then there can be no evasion.

All this is merely one form of that uncompromising democracy which characterizes Switzerland. A few of the Swiss cantons are pure democracies. The rest are representative republics. In both alike, however, the distinction between total and partial revision of the constitution, as well as that of initiation, drafting, and enacting, is quite generally observed.<sup>19</sup> The procedure is much like that in the American states, with the exception of the considerable extension given to popular initiative.<sup>20</sup>

Enactment of constitutional change in Switzerland is uniformly vested in the people. Such a theory as that according to which some American state conventions assume plenary authority and so proceed to enact into law a proposed constitution is entirely unknown to the Swiss system. Organic law, in other words, is always the product of direct popular legislation. This is not merely a uniformity of practice among the cantons. It is also a requirement of the federal constitution, the sixth article of which provides a federal guaranty of cantonal constitutions on specified conditions, one of which is that such constitutions shall have been ratified by the people.

Another of the conditions precedent to federal guaranty is that the cantonal constitutions may be amended whenever an absolute majority of all the citizens demand it.<sup>21</sup> This insures the popular initiative on constitutional legislation in all the cantons.

Petition of a specified number of citizens (*e. g.*, 15,000 in Berne) requires a popular vote on the question of amendment involved. If the petition is for total revision, and the popular vote approves it, the formulation (drafting) of the revision is intrusted either to the cantonal legislature (or to the council in the purely democratic cantons—Uri, Unterwalden, Glarus, Appenzell) or to a constitutional convention chosen for the purpose. The draft is then submitted to the people for enactment into law.

In several cantons the initiative may also be exercised by a single person or by a small group. In this case there is presented a completed draft of amendment, and it is at once voted upon by the people. This is the rule in the purely democratic cantons.

The constitution of Geneva vests in the cantonal legislature the initiative and the drafting of partial revision, which is then submitted to the people for enactment.<sup>22</sup> Every fifteen years the question of total revision is submitted to the people. If revi-

<sup>19</sup> *Post*, pp. 39, 40.

<sup>20</sup> DARESTE, Vol. I, pp. 516-96; BERGEAUD, pp. 258-90.

<sup>21</sup> Swiss Federal Constitution, Art. 6 (c).

<sup>22</sup> Constitution of Geneva, secs. 152, 153.



sion is voted, a constitutional convention is elected to make the draft, which also is then decided by popular vote.

Switzerland is eminently democratic. The voters have a close relation to legislation in general. But with reference to the organic law the Swiss idea is not merely that the people are lawmakers, but also that they shall always have an opportunity to express their will as to any given question. The referendum requires the assent of a clear majority of the people in order to make legislation valid. The initiative puts it in the power of a relatively small group—in the pure democracies, of a single citizen—to consult the popular will. The effect can only be to make Swiss cantonal constitutions far more elastic than those of American states. In the latter the initiative either is wholly in the hands of the legislature, or is exercised by the people only on legislative suggestion (save in New York, where the people are consulted regularly every twenty years). As legislatures are elected on a variety of issues, among which constitutional revision is apt to cut a small figure, it is easily possible for the legislature to avoid submitting amendments for which the people would gladly vote.

The Swiss plan permits the ready expression of popular desire. The American plan affords time for more mature deliberation. The Swiss plan makes it easy for the people to change their constitutions whenever they wish. The people of the American states can change their constitutions whenever they very earnestly wish it.

In both Swiss and American plans certain ideas are made prominent.

It is believed that in case of legislation so important as that which changes the fundamental law there should be no doubt that it really expresses the deliberate will of the political state. Hence the care taken to insure deliberation and to ascertain beyond the possibility of doubt what is the actual determination of the state. The various provisions of the two sets of constitutions, Swiss and American, are devised in order to secure these two essentials.

An analysis of their provisions will show this fact. Some are designed to secure delay in action, publicity of propositions of amendment, and full consideration and discussion of such propositions. Examples are the requirement of some American state constitutions that a proposed amendment shall not be acted on by the people until it has passed two successive legislatures; that it shall be entered in full on the journals of both houses; that it shall be published in newspapers a certain time before the election of the second legislature which is to consider it, and a certain time before the election at which the people are to pass upon it. Some or all of these requirements are in force, or have been in force, in a number of states.

Other requirements are intended to secure an incontestable expression of the public will. Such are those which require an especially large majority in the legislative bodies—two-thirds in most of the American states, three-fifths in a few. Such is the requirement of a two-thirds vote in each house of Congress for proposing a federal amendment, and of three-fourths of the states for ratifying the same. Such is the Swiss requirement for ratification by a majority both of the people and of the cantons.

There would be no particular reason other than those above named for not allowing constitutional legislation to follow in all respects the course of ordinary legislation, were it not for the fact that such a method puts no check on the legislative body—a body which is the agent of the state quite as definitely as are the executive and the courts, and therefore may easily result in making the constitution a nullity. A legislature tends to increase its powers by every means possible. Any agent of the state may become a tyrant. A legislature is quite as dangerous to popular liberties as a king may be—indeed, no fact in the political development of America is more obvious than the growing distrust of legislative bodies. There is no safeguard against this danger unless the constitution be put above the legislature, beyond its reach, and unless it impose on that body specific restrictions which it cannot legally pass.

Chief Justice Marshall, in *Marbury vs. Madison* (1 Cranch 137), says:

The original and supreme will organizes the government, and assigns to different departments their respective powers. It may either stop here, or establish certain limits not to be transcended by those departments.

The government of the United States is of the latter description. The powers of the legislature are defined and limited; and that those limits may not be mistaken, or forgotten, the Constitution is written. To what purpose are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those intended to be restrained? The distinction between a government with limited and unlimited powers is abolished, if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed are of equal obligation. It is a proposition too plain to be contested, that the Constitution controls any act repugnant to it; or, that the legislature may not alter the Constitution by an ordinary act.

Between these alternatives there is no middle ground. The Constitution is either a superior paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and, like other acts, is alterable when the legislature shall please to alter it.

If the former part of the alternative be true, then a legislative act, contrary to the Constitution, is not law; if the latter part be true, then written constitutions are absurd attempts, on the part of the people, to limit a power in its own nature illimitable.

In this opinion Justice Marshall, with his usual clearness, expresses what perhaps we may call the American doctrine of the relation of constitutional legislation to ordinary legislation. Both, to be sure, are law because they are supposed to represent the will of the state. But the difference in importance is so fundamental that it is held necessary to have a very different procedure in determining and ascertaining the public will, and a very different postulate as to what shall be considered as in fact the will of the people. The collective will of a number of people evidently can rarely be the unanimous voice of all. Hence it is variously conceded that for different purposes it shall be understood that the public will is expressed by a majority of the people, by a plurality of the people, by a majority or plurality of representatives, or by an especial majority either of the people or of their representatives. For ordinary purposes American parliamentary law fixes a quorum of a legislative body as a majority of all the members elected to it, and permits legislation by a mere majority of such quorum.

For some purposes, especially for financial legislation, no action is valid unless adopted by a majority of all the members. For still others, a two-thirds vote, either of a quorum or of all the members, is required (*e. g.*, in passing a bill over the executive veto). In all these cases legislative action has the force of law because the representative body is held to express the will of the state. The differences in requirement are caused by the view taken in the constitution of the relative importance of different sorts of legislation, and hence of the precise definition of what for various purposes shall be held to constitute the collective will.

Just for this reason, then, the American doctrine requires a more exacting means of expressing the collective will for constitutional legislation than for ordinary legislation. The difference is one of relative importance. The organic law is held to be far more important than any ordinary law.

Further, the American doctrine seeks to safeguard the organic law against legislative encroachment. Hence American constitutions vest in legislatures as little as possible of the power in relation to constitutional amendment. As has been seen, convenience necessitates giving them some share in the process. But the constantly growing tendency has been to minimize that share. In both of these respects, though in a somewhat different way, the Swiss practice follows the American doctrine.

In Germany a different view has been held, and has been to some extent embodied in organic law. Laband insists that ordinary legislative procedure should be sufficient for constitutional modification, for the reason that there is, in his opinion, no essential difference between ordinary and constitutional legislation. Each is law because it is the will of the sovereign. Each is equally with the other the sovereign will. The legislature represents that will and embodies it in law. Hence any legislative action has equal validity with any other.

There is no will in the state superior to that of the sovereign, and it is from his will that both the constitution and laws draw their binding force. . . . The doctrine that individual laws ought always to be in harmony with the constitution, and that they must not be incompatible with it, is simply a postulate of legislative practice. It is not a legal axiom. Although it appears desirable that the system of public and private laws established by statute shall not be in contradiction with the text of the constitution, the existence of such a contradiction is possible in fact and admissible in law, just as a divergence between the penal, commercial, or civil code and a subsequent special law, is possible.<sup>23</sup>

To one who speaks from the American point of view, this seems to miss some of the essential points. No one will deny that both constitutional and ordinary laws derive binding force from the fact that they embody the will of the state. So far, the two kinds of law are equal—*i. e.*, they are equal as to their source.

The primary difference, however, lies in their relative importance. Organic law is that which the state regards as of graver importance than any other, and hence as something which should be more stable than any other.

<sup>23</sup> LABAND, *Staatsrecht des Deutschen Reichs*, Vol. I, p. 546.



Because of this greater importance, and in order to secure greater stability, it is held that for constitutional law there should be a more exacting definition of what constitutes the will of the state than is requisite for ordinary law.

Further, it is insisted that one vital purpose of organic law is to limit the powers of the legislature — a purpose impossible of attainment if organic law exists at legislative discretion.

None of these considerations come within Laband's theory. His supposed ground of difference between the two kinds of law is non-essential, while he ignores those differences which are essential. His comparison of the relation between organic law and ordinary law, on the one hand, with special legislation, which may be in derogation to civil, commercial, or penal codes, is peculiarly inapt. Such special legislation is merely of the nature of an amendment to those codes, coming not merely from the same source as the codes, but also in the same way and having equal authority. There is no resemblance to the relation of constitutional and ordinary legislation.

Organic law and ordinary law, as considered by American jurisprudence, are fundamentally different not in their source, but in their respective authority. Organic law is supreme. If at any point it conflicts with ordinary law, the latter gives way. Ordinary law which conflicts with the constitution, in short, becomes of no effect. It is not law at all. Both are the will of the state. But the state has also willed that what it regards as the more important shall have precedence. The primacy of organic law is as much the will of the state as is either kind of law itself. The constitution is the supreme law of the land. The supremacy of the constitution is itself a part of the supreme law.<sup>24</sup> In recognition of this fundamental difference between organic law and ordinary law, and of the danger of permitting the agents of the people created under the constitution to share in constitutional change, American political science has made at least two notable experiments.

The first of these is the council of censors as known in the constitution of Pennsylvania from 1776 to 1790, and in the constitutions of Vermont from 1777 to 1870.

The first state constitution of Pennsylvania (1776, sec. 47) provided for the election by the people every seven years of a council of censors, one of whose duties should be to order the election of a constitutional convention if in their judgment there should be need of amendment. The censors were to hold office for one year. Under this provision but one council of censors was ever chosen (1783). As that body did not summon a convention, and as the people wished total revision, a convention was called by act of the legislature (1789) for that purpose. The new constitution (1790) abolished the council of censors.

Meanwhile<sup>25</sup> Vermont adopted a constitution patterned largely after that of Pennsylvania and including the council of censors. Such councils were regularly elected in that state from 1785 to 1869, being abolished only by the amendments of

<sup>24</sup> U. S. Constitution, Art. VI, sec. 2.

<sup>25</sup> Constitution of Vermont, 1777, sec. xlv.

1870. Several conventions were called by the councils, and these conventions adopted a long list of amendments.

The device of a council of censors was not successful. That body seemed to feel that in order to justify its existence it was necessary to propose amendments and to call conventions for their consideration. The plan was too cumbersome and mechanical and altogether too fertile in more or less artificial propositions of change in the constitution.

A second and more successful attempt to separate the representative organization by the state for considering organic law from the corresponding organization for enacting ordinary law is found in the constitutional history of the state of New York.

In the constitution of that state adopted in 1846 it was provided not merely that the legislature might at any time submit to the people the question whether a convention should be called, but further that once each twenty years, irrespective of legislative action, the people should vote on that question.<sup>26</sup> In either case, if the vote was in the affirmative it then became the duty of the legislature to provide by law for the election and organization of such convention. By this provision it will be seen that popular initiative in securing amendment was secured without regard to the legislature. In 1894 the constitution of New York was again totally revised, and popular initiative was still further guarded.<sup>27</sup> Not merely is the popular vote on the question of holding a convention to be taken at twenty-year intervals, but the last vestige of intervention by the legislature in the matter is swept finally away. In case the people vote in the affirmative, the constitution itself provides minutely for the apportionment, election, organization, and procedure of the convention. Thus there is now imbedded in the constitution of New York a complete system for total revision of the constitution of that state beyond the control of the legislature. The people initiate, the convention drafts, the people enact.

The problem of how the people may modify their organic law without the intervention of their governmental agents, who may be deeply interested in preventing such modification, is one of the most difficult in political science. It is hardly solved in the federal constitution of the United States. In the closing debates of the convention of 1787 Colonel Mason, of Virginia, sharply criticised the plan adopted:<sup>28</sup> "As the proposing of amendments is in both the modes to depend, in the first immediately, and in the second ultimately, on Congress, no amendments of the proper kind would ever be obtained by the people, if the government should become oppressive, as he verily believed would become the case." The New York plan seems to offer an adequate solution, so far as calling a convention is concerned. But there is no solution yet reached in this country relating to the submission of single amendments, in which case a convention is obviously undesirable. Various methods of popular initiative, on the Swiss plan, have been urged. Possibly in some carefully guarded plan of this

<sup>26</sup> New York Constitution, 1846, Art. XIII, sec. 2.

<sup>27</sup> New York Constitution, 1894, Art. XIV, sec. 2.

<sup>28</sup> Madison's Journal of the Convention, September 15, 1787.

sort, tentatively adopted and perfected by experience, the final solution may be found. A mere copy of the Swiss system would hardly work in so complex, so changing, and so populous a community as that of an American state.

#### THE GOVERNMENT

The ordinary organ of the political state is the government, and with this a large part of every constitution is concerned. The provisions on this subject deal with the *structure* of the government, with the *powers* and *duties* of its various officers, and with *restrictions* placed on them.

#### STRUCTURE OF GOVERNMENT

In its most essential outlines governmental structure is marked out in a constitution, details being left to ordinary statute. The extent covered by constitutional provisions differs in the various branches of government, and in various nations. Usually constitutional structure is most nearly complete in relation to the legislature, while great latitude is allowed that body in framing the courts and the administrative branch. The head of the administration is always constitutional, as is commonly the case with the main appellate court.

The legislature in every constitutional state either is a single body directly chosen by the electorate (as in Greece, Servia, Roumania, and virtually in Norway), or, as is usually the case, is bicameral, with a popularly elected house as one of the two chambers. As we have already noted, the political state is organized with direct reference to the choice of legislators. The constitution, besides determining this electoral organization, deals with the number of members in the popular house, with their appointment, their term of office, their prerequisite qualifications, and with the organization of the house as a legislative body.

The number of members is usually determined by statute, but sometimes with a constitutional minimum. This in the United States was originally a requirement that there should be not less than one for each 30,000 of population. Each state must have at least one, and as the apportionment must be among the states according to population, there naturally will always be more representatives than there are states.<sup>29</sup>

Apportionment, again, is left to statute, as it must change with changing population conditions. Specific conditions of apportionment, however, may be fixed in the constitution. In the United States the apportionment of representatives is to be based jointly on population and on state areas. Each state must have at least one member, the members are assigned to states, the assignment must be in proportion to population.<sup>30</sup> In France and Germany apportionment is wholly statutory, while in Switzerland it is wholly constitutional.<sup>31</sup>

The term of office is fixed in the constitution. In countries which give the execu-

<sup>29</sup> United States Constitution, Art. I, sec. 1, § 3; Amendment XIV, sec. 2.

<sup>30</sup> *Ibid.*

<sup>31</sup> Federal Constitution of Switzerland, Art. 72; *Verfassung des deutschen Reichs*, Art. 20; *Loi relative à l'organisation des pouvoirs publics*, Art. 1.



tive the power of dissolution, however, the constitutional term is subject at any time to be terminated by such executive action. This is the case in all countries which have cabinet government (*e.g.*, France, Austria, Italy) and in the German empire. In Switzerland the constitutional term of the members of the National Council may be terminated in order that a new Council may be chosen to formulate a constitutional amendment demanded by popular vote.<sup>32</sup>

Qualifications are fixed for members of the House in the constitution of the United States,<sup>33</sup> and in that of Switzerland (Art. 75), but in other European lands are usually left to statute.

The organization of the House is specifically left to that body in the constitution of the United States,<sup>34</sup> and is impliedly so left in most European constitutions. In Switzerland the power is left to the Council under some specific restrictions (Art. 78).

The structure of the other house of the bicameral national legislature is far more definitely fixed in the constitution. In some constitutions the number of members is specified—in the United States two for each state, in Switzerland two for each canton, in France 300 members, in Germany 58, in the Netherlands 50. In Belgium the number is varying, being dependent on population, but is always equal to half the number in the lower house. In Norway the legislature (the Storting) is chosen indirectly. There are 114 members, and on assembling they divide into two houses, one-fourth forming the Lagthing and the remaining three-fourths the Odelsting. The Swedish upper house contains 150 members, elected indirectly. In all these countries the members are elected, or appointed, for limited terms.

Other nations have constructed an upper house modeled somewhat after the British House of Lords. The Italian Senate contains the princes of the royal family of full age, and an indefinite number of senators appointed by the king for life. The conditions of appointment are the age of forty years, the filling of high office, distinction in some public pursuit, or wealth.

The Prussian upper house consists of members appointed by the crown, either for life or on hereditary tenure, and a few elected members.<sup>35</sup> The Austrian House of Lords consists of princes of the imperial family, hereditary peers, life peers appointed by the emperor, and seventeen high ecclesiastics who hold the peerage by virtue of their sees. The Hungarian House of Magnates is somewhat similar in structure, but includes a much larger number of ecclesiastics (fifty-four—twelve of these being representatives of Protestant bodies), and also some life peers elected by the upper house itself, and three representatives from Croatia—Slavonia.

The organization of the upper house, like that of the lower, is usually left to the house itself. In the United States the presidency of the Senate is fixed in the vice-president,<sup>36</sup> and in Germany the imperial chancellor presides in the Federal Council.<sup>37</sup> The French Senate elects its own president and other officers.<sup>38</sup> With a very few

<sup>32</sup> Federal Constitution of Switzerland, Art. 120.

<sup>33</sup> Art. I, sec. 2, § 2.

<sup>34</sup> Art. I, sec. 2, § 5.

<sup>35</sup> Prussian Constitution, Arts. 65-9.

<sup>36</sup> U. S. Constitution, Art. I, sec. 3, § 4.

<sup>37</sup> *Reichsverfassung*, Art. 15.

<sup>38</sup> *Loi constitutionnelle*, 16 juillet 1875, Art. 11.

exceptions (*e. g.*, in Prussia and Hungary, as above noted), the number and personnel of membership in the upper house are independent of statute or of the house itself.

Details of organization of both houses are statutory—the number, duties, and compensation of minor officers, for instance.

The structure of the executive, so far as the chief of the administration is concerned, is uniformly constitutional. The great body of administrative subordinates, however, are provided by statute.

There are three types of executive known to modern constitutional government.

In the United States executive power is vested in a single person, who has a fixed tenure, is supreme over his subordinates, and is independent of the legislature. The president is chosen for a four years' term by electors, who in turn are appointed by the states, in a manner left to the discretion of their legislature.<sup>39</sup> His large powers of appointment and removal give him the actual direction of administration. Of course, his policies cannot be carried out with entire success unless he has the co-operation of the legislature. Still, on the other hand, he cannot in any practical way be controlled by that body. This we may call the *unitary*, or *presidential*, system. The somewhat definite constitutional provisions are supplemented by exhaustive statutory legislation covering, in the first place, details as to the procedure of the electors and a mode of settling disputes over the election, and, in the second place, providing for the numerous executive departments and officials—civil service, army, and navy.

The executive of the German empire is on the presidential system. The emperor holds by a tenure independent of the legislature (the king of Prussia is *ipso facto* German emperor), and is supreme over his administrative departments.<sup>40</sup> The military and naval service in Germany are much more definitely fixed in the constitution than is the case in the United States,<sup>41</sup> but even here much statutory legislation is necessary. The imperial civil service is far less extensive than in the United States, as German policy involves carrying out imperial law by means of state authorities. Customs and internal revenue, for instance, are collected by state officials. The imperial service, therefore, comprises little more than the central departments at Berlin and the diplomatic and consular service abroad.

The second form of executive structure, quite common in Europe, is *dual*, vesting the main dignity and continuity of office in a single person, and the main executive power in a group of persons—the cabinet—whose members are usually heads of executive departments. The cabinet, while appointed by the head of the state, is in fact responsible to the legislature and subject therefore to legislative control. This is the so-called cabinet system of government, which originated in England. It has been adopted in France, Italy, Spain, Portugal, Belgium, Holland, Austria, Hungary, and in a modified form in some other countries. The constitution goes no farther than to define the relation

<sup>39</sup> U. S. Constitution, Art. II, sec. 1; Amendment XII.

<sup>41</sup> *Ibid.*, Arts. 53, 57–68.

<sup>40</sup> *Verfassung des Deutschen Reichs*, Art. 11.

of the head of the state and the cabinet to each other and to the legislature. The specific cabinet departments, with all their internal structure, are entirely statutory.

The head of the state, on the other hand, is defined by the constitution. In all but France the form is monarchical (*e.g.*, Constitution of Italy, Art. II: "The throne is hereditary according to the Salic law"), with hereditary succession. In France the president is elected for a seven-years' term by the National Assembly—*i.e.*, the two houses of the legislature in joint session.<sup>42</sup> His status is exactly that of a constitutional monarch with a responsible ministry.<sup>43</sup>

The curious plan of a ministry which must have a parliamentary majority behind it, the product of peculiar conditions in English constitutional development, has thus been transplanted to the continent. It can hardly be called an unmixed success.

In the states of the American Union the presidential, or unitary, plan of executive structure is apparently followed in all cases. In fact, however, this is far from accurate. The governor is nominally head of the state, but the real executive powers are distributed among various quite independent offices.<sup>44</sup> The governor is elected by the people, and holds for a fixed term, being thus independent of the legislature. Heads of administrative departments corresponding to those held by members of the federal cabinet are also in nearly all cases elected by the people for fixed terms, and thus are independent both of governor and legislature. The legislature, on the other hand, is independent of the executive, as both houses hold for a fixed term, and the governor has no power of dissolution. This is a nondescript plan, which in a national government would be sure to fail. In a state administration it makes less difference, however, as there is less need of a coherent state policy and less room for individual differences of judgment in plans of administration. In the states the center of political power is in the legislature, while in the federal government the legislature and the executive divide power and responsibility rather equally. The statutory part of the administration in the states is very extensive. Besides the constitutional departments, such as the state treasury, that of secretary of state, attorney-general, auditor, and perhaps superintendent of public instruction, and state engineer and surveyor, there is usually a number of departments and institutions, generally administered by boards, and all created by statute. The whole structure of county and municipal government, with the public schools and the state militia, both military and naval, are also statutory, under certain constitutional restrictions. In some of these cases the statute vests the appointing power in the governor. On the whole, however, the constitution of a state is apt to provide little more than a skeleton of administrative structure, leaving it to be filled in by the legislature.

The third sort of executive known to modern constitutional states is that existing in the Swiss federal government—that of an executive council, or what might be called the *plural* system, as compared with the unitary executive of the United States and the dual executive of France. The Swiss constitution (Arts. 95–8) provides an

<sup>42</sup> *Loi* 25–28 février 1875, Art. 2.

<sup>43</sup> *Ibid.*, Art. 6.

<sup>44</sup> *E. g.*, Constitution of Illinois.



executive of seven persons, chosen for a three-year term by the two houses of the federal legislature in joint session. The president of the confederation is also chosen by the federal legislature in like manner, being selected from the council of seven for a term of one year, and being ineligible for the year next ensuing. The president is little more than chairman of the council. The seven members are heads of executive departments (Art. 103), but no executive decision is made except by the council as a whole.

This plan of a group executive is virtually the same as that of France under the directory (1795-99), and is naturally such as might be expected in a nation which has reason to dread monarchy. It differs from the cabinet system in the lack of administrative continuity which is supplied by the head of the state (whether king or president), and also by its tenure for a fixed term. The system of parliamentary responsibility might perhaps be applied to the group executive, but it would not be so convenient as in a state with a permanent, or relatively permanent, head.

Details of structure, civil and military, are supplied in Switzerland, as in other countries, by statutory enactment.

The structure of the courts is more largely left to statute in all constitutional states than is the case with either of the other great branches of government.

In France the whole judicial system is statutory — the constitutional laws are silent on the subject, save only in vesting some judicial power in the Senate.<sup>45</sup> In the United States the federal constitution ordains that there shall be one supreme court,<sup>46</sup> but leaves to statute the whole matter of the structure of that court and of all inferior courts, save only the provision of the tenure by good behavior and of appointment by the president.<sup>47</sup> In point of fact, Congress has provided for an elaborate system of federal courts.<sup>48</sup> The Senate is by the constitution a court of impeachment. The German imperial constitution vests certain judicial power in the Federal Council.<sup>49</sup> The whole remaining judicial structure is statutory. Unlike the American system, there is not a dual judiciary in Germany, however. The courts are created by federal law and administer federal law, but are appointed in the several states of the empire by the state authorities, and are in a large sense state courts. But they are wholly statutory. Thus the German judiciary in its constitutional basis is almost exactly like that of France, notwithstanding the federal structure of the empire and the unitary structure of the republic.

The Swiss constitution, like that of the United States, provides for one federal court,<sup>50</sup> but leaves to statute "the organization by the federal court and of its sections, the number of judges and alternates, their term of office, and their salary."<sup>51</sup> The judges, like the executive council, are chosen by the two houses of the legislature in joint session.<sup>52</sup> Cantonal courts, again, as is the case in the United States, and in this respect differing widely from the German system, are regulated exclusively by cantonal law.

<sup>45</sup> *Loi constitutionnelle*, 16 juillet 1875, Art. 12.

<sup>46</sup> U. S. Constitution, Art. III, sec. 1.

<sup>47</sup> *Ibid.*, Art. II, sec. 2, § 2; Art. III, sec. 1.

<sup>48</sup> See especially the judiciary acts of 1789, of 1867, and of 1891.

<sup>49</sup> Arts. 74, 76, 79.

<sup>50</sup> Swiss Constitution, Arts. 106-9.

<sup>51</sup> *Ibid.*, Art. 107.

<sup>52</sup> *Ibid.*

The Italian constitution (Arts. 68-73) leaves the structure of the courts to statute, under a few limitations. The judges are appointed by the crown, and after a probationary term of three years their term is permanent (Art. 69).

The Belgian constitution provides for one appellate court (Art. 95), as is the case in Switzerland and the United States, and also for three intermediate appellate courts (Art. 104). All judges are appointed by the crown (Art. 99), and hold on life tenure (Art. 100). It is also provided (*ibid.*) that "the removal of a judge from one place to another can take place only by a new appointment and with his consent." The absence of such a provision in the Italian constitution has led to frequent transfer of judges, and thus has tended to break down the independence of the judiciary by subordinating it to the political branch of government.<sup>53</sup> Aside from these and a few other more or less unimportant limitations, the legislature in Belgium is free to fashion courts at will (Art. 94).

In the United States the structure of the state judiciary is independent of federal legislation, and is largely regulated by the state constitutions. Indeed, these documents are concerned with the structure of the courts much more in detail than is the case with the federal constitution, and successive constitutions in the same state nearly always reconstruct judicial structure. The lawyers, who are apt to form an influential part of a constitutional convention, are keen to detect defects in the courts and are eager to remedy them. Thus in the New York convention of 1821 a new judiciary article (Art. V) was adopted, by which existing courts were abolished, and an entirely new system was created. Circuit courts were interposed between the county courts and the supreme court, and the legislature was authorized to vest equity powers in any of the subordinate courts, "subject to the appellate jurisdiction of the chancellor" (Art. V, sec. 5).<sup>54</sup> Again in 1846 a constitutional convention met in Albany and adopted a new constitution. The article on the judiciary (Art. VI) made a sweeping reform of the courts. The old court for the trial of impeachments and for the correction of errors, the highest appellate court of the state, to which appeals lay both from the supreme court and from the court of the chancellor, consisted of the state senate, the judges of the supreme court, and the chancellor.<sup>55</sup> This was preserved by the convention of 1821 (Art. V, sec. 1). The convention of 1846 relegated the trial of impeachments to the senate, created a new court of appeals distinct from the legislative branch of the government, abolished the circuit courts, divided the supreme court into branches, which were to hold court in separate districts of the state, abolished the court of chancery, vested equity jurisdiction in the courts of law, made all the supreme-court judges and the judges of the court of appeals elective, and made the term of office eight years. The next constitutional convention of New York met in 1867. In 1869 their plan for a new constitution was submitted to the people by separate articles, and the only one ratified was that on the judiciary (Art. VI). By this article the term of

<sup>53</sup> LOWELL, *Governments and Parties*, Vol. I, pp. 177, 178.

<sup>55</sup> Constitution of 1777, Art. XXXII.

<sup>54</sup> See HAMMOND, *Political History of New York*, Vol. II, pp. 52-64.

office of judges, both of the court of appeals and of the supreme court, was extended to fourteen years, and the term of the county judge was extended from four years to six years. The court of appeals was far behind in its docket, and to relieve the situation a commission of appeal was created, authorized to act in lieu of the court of appeals in all cases which might be pending on the first of January, 1869. Various other changes were also effected. In 1894 New York again held a constitutional convention, and the new constitution was adopted by vote of the people. Again one of its essential articles was that which reconstructed the judiciary (Art. VI).

The constitutional changes which the successive conventions of New York have embodied in the judiciary system of that state have been given somewhat in detail as illustrating the minuteness with which state constitutions treat judiciary structure. This is in rather sharp contrast with the sparing touch on the subject in national constitutions. Still, even with the detail of constitutional provisions, much is necessarily left to state legislation, and accordingly every convention is followed by a judiciary statute full of elaboration.

Taking constitutional structure of government as a whole, it is plain that what each nation regards as most imperative is therein contained. All else is left to statute. If the legislatures abuse the powers confided to them, there may be amendments taking over such powers and fixing the desired structure in the constitution. The legislature, as intrusted with a vast field of law-making power, is the most vital part of the government, and accordingly its structure is worked out in all constitutions with great care and attention to detail. Still the statutory powers with reference to the legislature are very considerable—as witness apportionment and election laws. However, after all no statutes can affect the essence of legislative structure.

At the other end of the scale are the courts. Modern political development has turned very little on their structure, being pretty well content with the judicial system which has grown up through the ages. Judicial independence from other departments of government has been the main thing sought, and this is generally secured by fixity of tenure; in most of the states in the American Union the same end is attained by an elective judiciary. Nearly the whole field of judicial structure, however, save only in our states, is left to statute.

Midway between the legislature and the courts, in point of constitutional exactness of treatment, lies the executive. The fundamental principles, the structure of the supreme executive authority—these are necessarily constitutional. But by far the greater mass of administrative organization lies in the field of statutory creation.

A constitution can be given effect, and be put in force as a living thing, only by a long series of comprehensive statutes. When the first federal Congress under the present constitution met, it was at once confronted with the necessity of providing by law for the machinery of government of which only the bare outlines were in existence. By successive acts in 1789 were created the first three executive departments—those of state, treasury, and war. In later years the remaining departments, as they now



exist with their various bureaus and officials, have been established by a series of statutes. In like manner the judiciary act of 1789 created the courts, which subsequent statutes have only modified in details.

In the states of our republic structure is far more definitely fixed in the constitution. Still, there is left to the legislature a large field of power over structure. The difference between states and the United States lies mainly in the fact that the former may much more easily amend their constitutions than the latter, and hence they have repeatedly given expression to their discontent by embodying in organic law reorganizations which constantly tend to become more elaborate. The first constitution of New York (1777), omitting the preamble, is comprised in about seven pages (of Poore's collection), that of 1821 in nine pages, that of 1846 in seventeen pages.

#### GOVERNMENTAL POWERS AND DUTIES

The powers and duties of the different branches of government, including the special rights and privileges of the various officials, are partly stipulated in the constitution, partly vested by statute. What are deemed the most essential are constitutional, while the legislature is left large discretion in assigning further functions to the executive, and in distributing judicial powers among the several courts.

A careful distinction is made between powers and duties. The exercise of the former is discretionary, that of the latter is mandatory. Thus the president *may* convene Congress in extraordinary session,<sup>56</sup> but he *shall* take care that the laws be fully executed.<sup>57</sup>

Governmental powers are in a modern constitution distributed among various branches of government, it being thought dangerous to the public safety for one branch to exercise more than a definite portion of public functions. The three great branches into which governments have evolved are the legislature, which is intrusted with the making of statutes; the executive, which administers the laws, whether of the constitution or of the statutes; and the courts, which interpret and apply law. It is the implied theory of the federal constitution of the United States that these functions are kept separate. In the constitution of Illinois there is a specific stipulation: "The powers of the government of this state are divided into three distinct departments—the legislative, executive, and judicial; and no person, or collection of persons, being one of these departments, shall exercise any power properly belonging to either of the others, except as hereinafter expressly directed or permitted."<sup>58</sup>

It is impracticable to make such a separation of powers absolute. There is always a margin of function which of necessity overlaps two or more branches. But the old maxim, *De minimis lex non curat*, applies to constitutions as well as to other forms of law. As long as the three great branches of government are measurably separate and independent in structure, and as long as they keep on the whole to different spheres of work, the interests of the people do not suffer. It is the ancient

<sup>56</sup> U. S. Constitution, Art. II, sec. 3.

<sup>57</sup> *Ibid.*

<sup>58</sup> Illinois Constitution, Art. III.

conception of kingship, whereby the king was lawgiver, and law administrator, and at the same time final judge in interpreting law and administering justice under it, for which modern constitutions seek a substitute.

Another vital point in a constitution relates to the doctrine of residuary powers. By a constitution powers may be granted to the various branches of government. These are not usually when taken together the sum total of the powers which the sovereign authority—the political state—may exercise, but are only a part of them. What becomes of the remainder? They may be reserved by the political state from any of its governmental agencies, or they may be vested in some one of their forms. It is this remainder of powers which is known to political science as the residuary powers of government. In the British state the doctrine is that these residuary powers belong to the crown—*i. e.*, that the crown has all powers not forbidden by act of Parliament, or not vested by Parliament in some other branch of government. In the United States the residuary powers belong to the states.<sup>59</sup> The states in turn in their constitutions have limited their governments in various ways, and then leave the final residuary powers to their legislatures. In other words, the constitutional doctrine as to all branches of the federal government is that they have only such powers as are granted, expressly or by implication, in the constitution; while the principle of interpretation of state constitutions is that these documents do not contain a grant of powers to all departments, like the federal constitution—that they indeed grant powers to the executive and to the courts, but, on the other hand, limit the powers of the legislature; and hence that a state legislature may do anything not forbidden either by the federal constitution or by the state constitution.<sup>60</sup> In other words, as has been said, in the states final residuary powers are in the state legislatures.

While it is true that in the United States residuary powers belong to the states, and in each state to the legislature thereof, yet it must be remembered that this doctrine applies only to the states. When it comes to the territories a very different doctrine prevails. These are the property of the United States as a whole, and full powers for legislation are confided to Congress.<sup>61</sup> Thus the doctrine of the power of Congress over territories is analogous to that of the powers of the British crown—Congress may do anything not forbidden *ad hoc* by the constitution. The enumeration of prohibitions on Congress as relates to territories is not long—possibly the personal immunities guaranteed in the first eight amendments, certainly the immunity against the legal status of slavery<sup>62</sup> and the political immunity as to suffrage.<sup>63</sup> In short, residuary powers of government over territories belong to Congress, and in fact they cover nearly the whole governmental field.<sup>64</sup>

This is quite the reverse of the doctrine of the Dominion of Canada, in which federation the provinces have only delegated powers, while residuary powers are in

<sup>59</sup> U. S. Constitution, Amendment X.

<sup>62</sup> *Ibid.*, Amendment XIII.

<sup>60</sup> *E. g.*, *Wilson vs. Board of Trustees*, 133 Ill. 448; also cases there cited.

<sup>63</sup> *Ibid.*, Amendment XV.

<sup>61</sup> U. S. Constitution, Art. IV, sec. 3, § 2.

<sup>64</sup> *Am. Ins. Co. vs. Canter*, 1 Pet. 511, 542; *Mormon Church vs. U. S.*, 136 U. S. 1, and cases cited.

the federal government. This practically makes less difference than might appear, however, as the delegation is very specific.

Powers being granted and duties imposed on the various branches of government, it then becomes necessary for a constitution to provide some sanction in case of misuse of powers or violation of duty. This properly assumes two forms. There may be a criminal violation of duty—either omission to perform some mandate of the constitution, or trespass on powers constitutionally withheld—or performance of duty may be such as, without being illegal, still encounters disapproval on the part of the people or of other legal superiors.

In order to meet these cases constitutions make a variety of provisions.

Great officers of state in the United States, “the President, Vice-President, and all civil officers of the United States,”<sup>65</sup> are subject to impeachment, and impeachments are tried by the Senate sitting as a court. A similar practice is followed in most of the states; in Nebraska the impeachment is brought by the two houses of the legislature in joint session, and is tried by the supreme court, unless a justice of the supreme court is impeached, in which case the trial is before a court of impeachment consisting of all the district judges.<sup>66</sup> This process has been borrowed from England. Judgment in case of conviction under impeachment does not extend beyond removal from office—which may be made permanent in the shape of disqualification to hold office thereafter. After removal from office the convicted officer, if his offense is otherwise punishable under the statutes, is liable to the ordinary criminal process.

Impeachment is a clumsy proceeding, and resort to it is rarely made. In place of action under it inferior officers in case of malfeasance may be removed in a way provided by law, and are subject to indictment, trial, and conviction like private citizens.

To meet the contingency of unsatisfactory performance of duty two provisions are usually made. Tenure of office is for a fixed term, not too long, so that in case of dissatisfaction reappointment or re-election may be withheld, and the power of removal may be used. Of course, in such cases, there is no criminal liability. The British method of changing a ministry puts it in the power of the House of Commons at any time to displace an unsatisfactory cabinet. The American plan substitutes for this a short fixed term—four years for the executive, six years for the upper house of Congress, two years for the lower house.

#### GOVERNMENTAL RESTRICTIONS

A fundamental part of an American constitution is a series of prohibitions on government—the greater part of which are usually grouped as a so-called “bill of rights.” Every state in the Union has an article in its organic law devoted to this subject, and the federal constitution was strongly opposed at the outset in many of the states because it was lacking this body of stipulations. The British bill of rights was

<sup>65</sup> U. S. Constitution, Art. II., sec. 4.

<sup>66</sup> Nebraska Constitution, Art. III. sec. 14.



in its origin a series of restrictions on the crown, but in American constitutions the inhibitions lie against all branches of the government, including the legislature.

Rights which belong to individual members of the state as against the government are commonly called immunities. They are of two classes—civil rights, which belong to all members of the social state, and political rights, which belong usually only to members of the political state, although they are sometimes extended in part to some others. Political rights are the right of suffrage, by which membership in the political state is constituted, and the right to hold office. In our states women do not usually have the right to vote, although they are seldom constitutionally debarred from holding office.

Civil rights, or immunities, are those which belong to all members of the social state, as against government. They cover the field of civil liberty, and as a rule include the various exemptions from governmental intrusion which have been extorted from tyrannical governments through long ages of political and social strife. Such are the freedom of speech and of the press, religious liberty, the right of trial by jury, the *habeas corpus*, and the numerous other safeguards thrown around a member of the state who is accused of crime.

It is essential to notice that these immunities after all have their limits—the limit as a rule being the point at which the exercise of the right would unduly injure the state or any of its individual members. Thus libel laws are framed to repress freedom of speech which degenerates into license; thus the privilege of the writ of *habeas corpus* may be suspended when there is a pressing emergency of war; thus martial law may displace the orderly operation of civil judge and jury. This limitation of civil liberty is well expressed in the Illinois Bill of Rights: “. . . but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, excuse acts of licentiousness, or justify practices inconsistent with the peace and safety of the State;”<sup>67</sup> “Every person may freely speak, write, and publish on all subjects, being responsible for the abuse of that liberty.”<sup>68</sup>

Besides the general inhibitions against government found in the “bill of rights,” there are invariably in American constitutions special inhibitions against the acts of particular branches of the government, especially the legislature. Such in the federal constitution are prohibitions on Congress.<sup>69</sup> State constitutions not merely contain considerable lists of such specific prohibitions on the powers of the legislature, but, as has been intimated, the whole document must be construed as limiting the legislative power. One of the most striking facts in the political and constitutional history of our states is the growing distrust of representative assemblies, as evidenced by the steady increase of restrictions on these bodies in successive state constitutions. At the outset the states seemed to feel that there could be no more political troubles, seeing that they had freed themselves from the royal governor, who had been the object of all their civic animosities. But presently the people became aware that their own

<sup>67</sup> Illinois Constitution, Art. II, sec. 3.

<sup>68</sup> *Ibid.*, sec. 4.

<sup>69</sup> U. S. Constitution, Art. I, sec. 9.

representatives would bear watching, and were inclined to misuse their powers. The New York constitution of 1777 vested legislative power in the assembly of the state of New York, with scarcely any express restrictions. The constitution of 1821 added an article (Art. VII), in fourteen sections, embodying a bill of rights. Besides the usual provisions for civil liberty, there were sections requiring a two-thirds vote by the legislature for certain classes of acts, such as appropriating public money for private purposes, or creating or renewing corporations (sec. 9); requiring appropriation of money from the public land fund to be devoted to common schools; limiting the legislative power over the state canals and salt springs (sec. 10); forbidding the authorization of lotteries (sec. 11). In the constitution of 1846 the "bill of rights" (Art. I) contained eighteen sections, and besides there are entire new articles—one (Art. VII) devoted to restriction on the lawmaking power with reference to a long list of matters of finance, one (Art. VIII) containing like restrictions as to corporations, and one (Art. IX) as to the school fund. The constitution of 1894 re-enacted in Art. I the bill of rights of 1846 with few changes, and provided a considerable addition to the already long list of restrictions on the powers of the legislature.

In a federal state there is a dual government, and hence there is a dual bill of rights; in other words, the member of the state has constitutional immunities against the federal government and a second set of constitutional immunities against the states. These are both found in the federal constitution of the United States.

In the original constitution few restrictions were placed on government, the theory of the document being that it was a delegation of powers, that the federal government could use no others, and hence that a bill of rights was needless. In the field of powers granted some limitations were placed. Thus the writ of *habeas corpus* could be suspended, but only in case of war;<sup>70</sup> the power of criminal legislation, scanty at best, was restricted from covering bills of attainder or *ex post facto* laws;<sup>71</sup> the taxing power was put under the three restrictions of uniformity, for indirect taxes<sup>72</sup>—proportion to population, for direct taxes<sup>73</sup>—and absolute prohibition, for duties on exports from states;<sup>74</sup> the commerce power was restricted by the requirement of equity as among states;<sup>75</sup> the spending power was put under certain methods;<sup>76</sup> and titles of nobility were prohibited.<sup>77</sup> Again, the judicial power was limited in criminal trials to the use of juries,<sup>78</sup> and in treason trials by a fixed definition of the crime, by set rules of evidence, and by a restriction in penalty.<sup>79</sup> There were also sundry other restrictions implied at various points.

Strong demand on the part of ratifying states led to still further restrictions on the powers of the federal government, found in the first ten amendments. These are general and sweeping in form, but it must be noted that they do not apply to the states at all, but only to the federal government. This has been uniformly held by the Supreme Court, and in a long list of cases.<sup>80</sup> The federal judicial power was fur-

<sup>70</sup> Art. I, sec. 9, § 2.

<sup>72</sup> *Ibid.*, sec. 8, § 1.

<sup>74</sup> *Ibid.*, § 5.

<sup>71</sup> *Ibid.*, § 3.

<sup>73</sup> *Ibid.*, sec. 9, § 4.

<sup>75</sup> *Ibid.*, § 6.

<sup>76</sup> *Ibid.*, § 7.

<sup>78</sup> Art. III, sec. 2, § 3.

<sup>80</sup> *E. g.*, *Twitchell vs. The Commonwealth*, 7 Wallace 321.

<sup>77</sup> *Ibid.*, § 8.

<sup>79</sup> *Ibid.*, sec. 3.

ther limited by the eleventh amendment, and the thirteenth and fifteenth laid further inhibitions on the federal government in all branches.

This list of specified immunities, with the further doctrine that the federal government has no powers but those granted, either expressly or by limitation, covers the field of civil and political liberty which the federal government may not enter. Some are for the protection of the person, some for the protection of property.

Immunities against states are found in the tenth section of Art. I of the constitution. These inhibitions, it will be seen, are of two sorts—those which are *unqualified*, *i. e.*, things which states are forbidden to do under any circumstances at all, as, for example, to coin money, or pass a bill of attainder (§ 1); and those which are *qualified*, *i. e.*, things which states are forbidden to do except under specified conditions (such conditions, in fact, being the consent of Congress), as in paragraphs 2 and 3 of the section. Immunities against Congress, it may be said in passing, are also of these two kinds, qualified and unqualified. Other immunities against states are found in the last three amendments—the war amendments—which were avowedly intended to secure civil and political immunities for the freedmen.

A still further class of immunities lies in implications from the powers of the federal government. If a power is granted to Congress which from its nature can be used by only one of the two parts of our federal system, *i. e.*, either by the federal government or by the states, but not by both simultaneously, then the exercise of that power by Congress must be understood as excluding the states from the field thus occupied. An example will be found in the power of Congress to make “uniform laws on the subject of bankruptcies throughout the United States.”<sup>81</sup> So far as Congress legislates on this subject, state legislation is debarred. But from time to time Congress has repealed its bankruptcy laws, whereupon state power over the subject at once revives.<sup>82</sup> These implied immunities against states are determined by the Supreme Court in a long series of decisions, covering in detail a very wide range of subjects.

The express immunities above enumerated, and the implied immunities, as laid down by the Supreme Court, cover the whole field of civil and political liberty on which the states must not trespass. Some are for the protection of the person, some for the protection of property.

The immunities which belong to citizens of the United States as such are all in one or the other of these two classes. Some of them are identical—as the prohibition to enact an *ex post facto* law, which lies both against Congress and against the states. Others are quite distinct. The states may not pass a law impairing the obligation of a contract, but no such immunity lies against Congress. We may say that the two areas of civil and political liberty which the federal constitution grants to all citizens overlap in part only.

The fourteenth amendment raises a curious question. The first section contains the mandate that “No state shall make or enforce any law which shall abridge the privi-

<sup>81</sup> Art. I, sec. 8, § 4.

<sup>82</sup> *Sturges vs. Crowninshield*, 4 Wheaton 122; *Ogden vs. Saunders*, 12 Wheaton 213.



leges or immunities of citizens of the United States." What does this mean? What are the immunities in question? Does it mean that no state may abridge the immunities of a citizen from interference by the federal government, as, for example, the immunity which lies against trial in a federal court without a jury? How could a state do such a thing? Or does it mean that no state may abridge the immunities of a citizen which lie against the states, as, for example, the immunity against a law impairing the obligation of a contract? But no state can do this, even aside from the amendment. In fact, for a state to attempt by law the abridging of either class of "immunities of citizens of the United States" would be merely an unconstitutional act, which the federal courts would pronounce void at the first opportunity, even if the fourteenth amendment did not exist.

Does the amendment mean that all the immunities against federal action theretofore existing were taken over and made to lie also against the states? If this is the case, then the right of trial by jury in federal courts (Amendment VI) becomes by virtue of the fourteenth amendment also a right which applies to the state courts. But such a construction is certainly very farfetched. The amendment plainly forbids meddling with immunities already existing; it by no means creates any new immunities. This being the case, it can only be understood as converting a plainly implied prohibition on the states, forbidding them to interfere with the rights guaranteed to citizens of the United States by the federal constitution—"This constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding" (Art. VI, sec. 2)—into an express prohibition. It bestows no new immunity on the citizen and places no new prohibition on the states. It is redundant, so far as mere legal rights are concerned.

The citizen of the United States (Amendment XIV, sec. 1) is also a citizen of the state in which he resides, and the Supreme Court has held that these are two distinct citizenships, each having its own attributes,<sup>83</sup> although both may inhere in the same person. The citizen of a state as such has immunities from the action of the state government—a sphere of liberty, in short, within which the state government is forbidden to intrude. These immunities are found first of all in the federal constitution, for whatever is therein forbidden to a state is of course forbidden also to the government, which is the outward embodiment and agent of the state. The people of the state might, if they so wished, be content with these restrictions, and might intrust to their government the whole plentitude of power left untouched by the limitations on state action found in the federal constitution. In fact, however, the states in their constitutions have placed further restrictions on their governments, thus, as has been seen, constituting a state bill of rights. Some of these restrictions are needless repetitions

<sup>83</sup> *Slaughter-House Cases*, 16 Wallace 36.

of prohibitions which the federal constitution places on the states; as, for instance, the Illinois constitution (Art. II, sec. 14) forbids legislation enacting an *ex post facto* law, or a law impairing the obligations of contracts, both being forms of legislation forbidden the states expressly by the federal constitution.<sup>84</sup> Besides a few such repetitions, however, state bills of rights contain a list of immunities which their citizens would not enjoy but for the state inhibitions on their own government. The rights of free speech, freedom of religion, the writ of *habeas corpus*, trial by jury, and many other familiar immunities, belong to citizens of a state so far as courts and state laws are concerned, by virtue of the state constitution, and not at all by force of the corresponding provisions of the federal constitution, which, as has been pointed out, apply only to the federal government. There is nothing in the federal constitution which secures the citizen of a state against an established church set up by the state itself; indeed, Connecticut had virtually an established church until 1817. California has adopted an alternative for the grand jury, and any state may by amending its constitution do away with the petit jury altogether.

Immunities being defined in the organic law are of little avail to the citizen unless there is some way of securing them in fact. The barons of England who extorted Magna Carta from King John were well aware of this, and accordingly the sixty-first chapter of that venerable charter delegates to twenty-five barons the function of guarantors, giving them legal power to use force against the king or his agents in case of breach of the immunities. Modern law in the United States makes a more orderly and less rude provision to the same end by intrusting the guaranty of the immunities of the citizen to the courts. As guardians of civil liberty the courts have with us two functions.

The first of these is a phase of the judicial power which is peculiarly American—that of interpreting the constitution and declaring void a statute discovered to be repugnant to any constitutional provision.<sup>85</sup> This is a power given the courts for the protection of immunities which lie against a legislature, and is a very effective limit against legislative trespass on the restrictions of the organic law. While it is true that judicial interpretation holds a statute void only as applied to the case at bar, still the presumption always is that such a precedent will be followed in future cases, and the custom now is for such decision to be accepted quietly by all concerned as final. The power is not given to the courts in express terms, but is inferred from the supremacy of the constitution over any other legislation,<sup>86</sup> and from the jurisdiction expressly given.<sup>87</sup>

Such a power of the courts is unknown to the law of Europe. In the jurisprudence of the German empire there are perhaps indications that the imperial court may in time interpret its powers in that direction,<sup>88</sup> although by some German commentators this is strenuously denied, so far as related to imperial legislation.<sup>89</sup> But some consti-

<sup>84</sup> U. S. Constitution, Art. I, sec. 10, § 1.

<sup>85</sup> See especially the classic case of *Marbury vs. Madison* (1 Cranch, 137); also BRINTON COXE, *The Judicial Power and Unconstitutional Legislation*, chap. 14.

<sup>86</sup> *E. g.*, U. S. Constitution, Art. VI, sec. 2.

<sup>87</sup> *Ibid.*, Art. III, sec. 2.

<sup>88</sup> VON RÖNNE, *Staatsrecht der preussischen Monarchie*, Vol. II, pp. 62, 63.

<sup>89</sup> *E. g.*, LABAND, Vol. I, pp. 551-8.

tutions, like those of Prussia and Switzerland, expressly forbid the courts to question the validity of legislation.<sup>90</sup>

A second power of American courts for the protection of constitutional immunities lies in the various writs, most of them derived from English equity jurisprudence, whereby the executive branch may be restrained. The most important of these are the *habeas corpus*, by which the lawfulness of imprisonment may be judicially tested; the *injunction*, by which an officer may be forbidden to do an act which in the opinion of the courts violates fundamental rights; the *mandamus*, by which an officer is compelled to do an act by which individual rights may be attained. Of course, these powers of the courts may also have other ends, but they are discussed here solely in their relation to the question of securing immunities guaranteed by the organic law. These powers are unknown to courts on the continent of Europe.

Thus American courts, as guardians of the liberty of the citizen, are armed against unlawful acts of both the other great branches of government.

The Austrian constitution contains an elaborate bill of rights, which on paper would seem to make the Austrian state as free as the American. In fact, however, these rights are very imperfectly secured. The defect lies in the absence of such guarantees of freedom as are found in the United States. In the absence of judicial or other protection for immunities it is of little value to have them enumerated in swelling words in the organic statutes.

The immunities which cover the field of civil liberty—civil rights—belong to every citizen in the social states, but, as has been shown, lie against the government. In this these rights differ from those which inhere in members of the social state against one another. Such rights are also the creation of law—usually of statute or common law—and are protected by the executive and the courts. But they are entirely distinct from the immunities against the action of government which form a bill of rights. It was on that ground that the Supreme Court of the United States declared void an act of Congress designed to secure to all persons, without regard to race, equal privileges in hotels, theaters, railroad trains, and the like, purporting to guard the immunity of the fourteenth amendment: “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.” The court held that this provision of the constitution merely forbade state laws of such nature, but had no reference to the action of private individuals, such as the owners of hotels and theaters.<sup>91</sup>

Some hold that the fundamental rights secured by a constitution exist by nature as inherent in man, prior to human law and independent of legal enactment—in short, that they are natural rights. The Declaration of Independence recites that “all men are created equal; that they are endowed by their creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness.” The consti-

<sup>90</sup> Prussian Constitution, Art. 106, § 1; Swiss Constitution, Art. 113.

<sup>91</sup> *Civil Rights Cases*, 109 U. S. 3.



tution of Illinois repeats this formula of the declaration almost word for word as the first section of the state bill of rights (Art. II, sec. 1)—thus oddly embodying in a code of laws a declaration of a doctrine in political philosophy. The Declaration of Independence, one must remember, is not law. It is a political manifesto, with whose dogmas one may or may not agree, and which has no binding force on the courts. The immunities secured in a bill of rights have binding force on the judiciary; they are rights at all in the legal sense only because enacted into law as expressing the will of the political state. The question of natural rights belongs to the domain of philosophy, and no doubt leads to an interesting field of speculation. It has no place in the discussion of constitutional law, and has no relation to legal science in any form, excepting in so far as it may be one of the social forces which lead to the enactment of law. Constitutions are not concerned with natural rights, or with moral rights, but simply with legal rights.

Political rights, which cover the field of political liberty, as civil rights cover the field of civil liberty, as has been seen, include the right to hold office and the right to vote; in short, the right to share in government. The question whether either of these is a natural right is also a matter of political philosophy, not of law. Legally speaking, such rights exist merely because established by the will of the political state, whether in the constitution or in the statutes.

The guaranty of these rights lies partly in the courts, as in the case with civil rights, and partly in the other branches of government. For instance, each house of Congress is made the judge of the election, returns, and qualifications of its own members,<sup>92</sup> and this principle is very commonly followed in other constitutions. The origin of placing the guardianship of this political right in the houses of the legislature rather than in the courts lay in the peculiar circumstances of the development of the House of Commons in England. The predominance of the crown was so great that judges were merely tools of the king, and were used by him to secure pliant membership in the Commons. To remedy this evil the house insisted on reserving to itself the right to pass on contested elections—a right which was finally secured (1604). Since English courts have become independent, the reason for legislative power to judge such questions has disappeared, and accordingly since 1868 the courts once more are the guardians of this political right. It was found by experience that the house was likely to decide election cases on the ground of partisanship rather than of law or equity—a consideration not altogether without weight in the United States.

Our legislative bodies retain a peculiar judicial power, however, and a striking instance of its abuse occurred quite recently.<sup>93</sup> The political right of membership in the House of Representatives is determined by the constitution, and consists in age, citizenship, residence, and election—these and no more.<sup>94</sup> Whoever has these four qualifications has a constitutional right to a seat in the House, and the House is constituted “judge of the election, returns, and qualifications” of its members in

<sup>92</sup> U. S. Constitution, Art. I, sec. 5, § 1.

<sup>94</sup> U. S. Constitution, Art. I, secs. 2 and 3.

<sup>93</sup> 1900.

order that no one who has the constitutional qualifications may be denied this right. It is to be noted that the power of the House as to the qualifications of its members is that of a *judge*; the power is judicial, not legislative, and can therefore extend no farther than to ascertain the fact whether a given individual has the qualifications laid down in the constitution. If the House goes farther than that, and prescribes other qualifications as conditions precedent, it is plain that such action is legislative, and is absolutely beyond the constitutional power of the House. From the state of Utah, in 1898, a person was elected to the House who was charged with violation of the laws of that state against polygamy, and, believing him guilty, the House refused him admission.

There was no question that the person thus excluded possessed all the constitutional qualifications; he was duly elected, and his exclusion on the other ground was a gross violation of the constitution which constitutes a dangerous precedent. If the House is free to amend the constitution at will by adding further qualifications for membership, it may add any qualifications it pleases—a power which in times of great political stress may be used to secure a majority for a political party. The Utah member had a clear political right in the premises—his constitutional right to a seat—and his court, from which no appeal lay, wrought him a plain injustice. The Supreme Court would not have denied a right in response to popular clamor.

#### CONSTITUTIONAL REVISION

The last essential in a written constitution is a specific method of altering its provisions—the amending process. This has already been discussed in some detail under the head of “The Political State” (pp. 7-22).

It is an error to make this process so difficult that constitutional change is almost impossible; it is also an error for change to be so easy as to unsettle the relative permanence which should mark the organic law.

The Articles of Confederation, which formed the constitution of the United States from 1781 to 1789, could be altered only by unanimous assent of the states. Unanimous assent could not be had, and when government under the Articles was a proved failure, a new constitution was adopted by a process which was illegal and revolutionary—quite as revolutionary as the declaration of 1776, and quite as justifiable. Indeed, secession did not originate in 1860 with South Carolina. The thirteen colonies seceded from the British empire in 1775-76, and in 1787-88 eleven states seceded from the Union and formed a new one under the present constitution—the two states left outside coming in reluctantly at a later date. Taught by this experience, the amending process in the Philadelphia constitution was made dependent on the assent of three-fourths of the states.

Revision of the constitution may be total or partial—may result in a new organic law altogether, or in some amendment which does not alter the general character of the document,

A distinction may also be made between drafting and proposing a scheme of revision, which we may call the initiative, and the enactment into law of amendment thus initiated.

It may be said in general that the American plan usually involves placing the power to initiate and the power to enact in different hands, and that as a rule in American constitutions the initiation of total revision is intrusted to a convention, while the initiation of partial revision is confided to the ordinary legislature. This is the case in the federal constitution of the United States. The Congress, by a two-thirds vote in each house, may propose amendments, which then become law by enactment of the states, three-fourths being taken as expressing the will of the whole. In voting on a proposed amendment of the federal constitution the states are equal, each having one vote, as is the case in electing a president when there is no choice by the electors;<sup>95</sup> and the states vote indirectly, through their ordinary legislatures or through conventions called for the purpose. A federal convention for total revision has never yet been called under the present constitution.

In the states of the American Union partial revision is intrusted to the legislature, the amendment being submitted to a direct vote of the people for enactment. For total revision—which is not an uncommon thing, by the way—a convention elected for the purpose is the agent for initiation. As a rule, the plan of organic law drafted and recommended by a convention is also submitted for enactment to a direct vote of the people, although in not a few cases conventions have assumed to act with plenary power, and have therefore enacted into law without submission to the people the instrument drafted (as in case of the New York Convention of 1777, the Illinois Convention of 1818, the Louisiana Convention of 1898, and others, especially in southern states).

In European constitutions revision is usually left to the ordinary legislative agencies, with some restrictions as compared with ordinary legislation.<sup>96</sup> The peculiar Swiss provisions for popular initiative in constitutional revision have already been noticed.<sup>97</sup>

The fundamental principle is that organic law should be as nearly as possible the directly expressed will of the sovereign—*i. e.*, the political people. Switzerland and the states of the American Union reach this end by requiring a direct popular vote on the enactment of constitutions or of a constitutional amendment.

#### THE SCHEDULE

When a new constitution is formed it is necessary to provide for the transition from the existing system of government to that under the new plan. Provisions of this character are in states of the American Union usually grouped under the rather meaningless name of a "schedule." The schedule annexed to the Illinois constitution

<sup>95</sup> U. S. Constitution, Art. V; *ibid.*, Amendment XII.

<sup>97</sup> *Ante*, pp. 14-17.

<sup>96</sup> *Ante*, pp. 11-13; see also BORGEAUD, *Adoption and Amendment of Constitutions*.



of 1870 is a good illustration. Its preamble recites its purpose: "That no inconvenience may arise from the alterations and amendments made in the constitution of this state, and to carry the same into complete effect, it is hereby ordained and declared." Then follow twenty-six sections, providing elaborately for a popular vote on the question of accepting or rejecting the proposed constitution, for the continuance in office of existing officials until new ones should take their places, for a legislative apportionment, and for the election of a new legislature. Other sections continue existing laws and existing public liabilities, and make a variety of other stipulations, the most of them essential to avoid confusion in passing from government under the old constitution to government under the new.

The schedule of the Illinois constitution of 1818 was curious in that it contained certain sections which in reality were additional parts of the constitution. Thus, sec. 11 runs as follows: "It shall be the duty of the general assembly to enact such laws as may be necessary and proper to prevent the practice of duelling." Sec. 10 vested in the general assembly a vast appointing power: "An auditor of public accounts, an attorney-general, and such other officers of the state as may be necessary, may be appointed by the general assembly, whose duties may be regulated by law." Sec. 14 was odd: "Any person of thirty years of age who is a citizen of the United States and has resided within the limits of this State ten years next preceding his election, shall be eligible to the office of lieutenant governor; anything in the thirteenth section of the third article of this constitution contained to the contrary notwithstanding." Art. III, sec. 13, required one to have been for thirty years a citizen of the United States in order to be eligible to election as lieutenant governor. The president of the convention was Pierre Menard, a native of Quebec, who, although long a resident of the territory, was not naturalized until 1816. It had been arranged by the politicians that Menard should be elected lieutenant governor, and hence sec. 14 of the schedule was added in order that he should be qualified.

In the federal constitution of the United States the only provision looking to the transition from government under the Articles of Confederation to government under the constitution was Art. VII: "The ratification of the conventions of nine states shall be sufficient for the establishment of this constitution between the states so ratifying the same." All details were by implication left to the existing Congress of the Confederation, which body in fact adopted all the measures necessary to put the new government in motion.

#### SUBJECT-MATTER GERMANE TO A CONSTITUTION

The present constitutions of many of the states in the American Union have been criticised as containing much matter which should rather be statutory. There is no doubt that the tendency of state constitutions has been to increase greatly in bulk, as has already been pointed out (p. 29), and it is equally clear that on the whole the increase is caused by progressively closer restrictions on the powers of the legislature.

That such restrictions are improper in the organic law, however, is not so evident. The extent to which the people prefer to limit the powers of their agents, the government, is wholly a matter of judgment. Any restriction whatever which the sovereign people choose to embody in the constitution—in other words, any provision of law which it is the will of the people to put beyond the power of the legislature to alter—is germane to the restrictions normally found in a constitution, and it is a shallow criticism which would condemn them on such grounds.

Whether any given provision of this character is in itself wise is quite another question. Its wisdom or lack of wisdom as legislation, however, has nothing whatever to do with the propriety of embodying it in the constitution. There can be no doubt that there are constitutional provisions, as to a still greater extent there are statutory provisions, which are inexpedient and improper because they do not in fact represent the will of the people. The persistent clamor of an active group not infrequently induces a legislature to enact a measure which it does not itself approve and which a majority of the people do not want. If the irritation is sufficiently great it is likely that a subsequent legislature will repeal the act. But quite often the people leave the measure on the statute books and quietly disregard it. Much temperance legislation and legislation for Sunday observance are of this character. Many good people have their ardor for reform satisfied by the mere enactment of a law, apparently not realizing that a law is merely a means to an end, and that laws are by no means always self-executing.

Indeed, unless law is in fact what it is in form, the will of the people, it cannot easily be enforced. In other words, there should be a correspondence between legislation and social opinion such as to put behind the government a social force which will imperatively constrain obedience to the mandate of law. This is not the case with much legislation which seeks to regulate conduct only remotely affecting the interests of others than persons whose acts it is sought to restrain. Certain forms of gambling, certain amusements, or certain kinds of business on Sunday are forbidden by laws which illustrate this principle. Law should be the crystallization of general public opinion, not the merely hortatory expression of the views of a small portion of the community. The embodiment in the organic law of this last character of legislation is especially unfortunate. Its impropriety, however, does not come from the nature of the acts which it forbids, but from the fact that it is not the true will of the constituent people.

It is plain enough that the enforceability of law, whether constitutional or statutory, may depend also on the nature of the rights or duties which it establishes. A law specifying conditions of title to real property is easily enforceable, because failure to conform to its provisions at once vitiates such title and causes immediate inconvenience. A law requiring a limit of age for the employment of children in factories is not so easily enforceable, because there is often a strong motive for its evasion, and because it is not always easy to determine the age of a child who may be somewhat under the legal

limit. In other words, some provisions of law, including the organic law, may be called self-executing, while others are not.

In applying these principles to the organic law it should be observed that constitutional provisions which are not self-executing necessitate legislation to carry them into effect. In the absence of such legislation the provisions in question become dormant and, for the time being, of no effect. Such a provision is, as has already been pointed out (p. 34), the power of Congress to make uniform laws on the subject of bankruptcies. Legislation of this kind may then itself also be enforceable easily or with difficulty, according to its nature.

#### OBEDIENCE TO LAW THE ESSENCE OF AN ORDERLY STATE

Legislation of any kind, and especially that of the constitution, which is of such nature as easily to fall into desuetude, is a serious misfortune. It tends to weaken respect for law—and respect for law and willing obedience to its mandates are the essence of an enlightened modern community. Especially is this true of the organic law. Reverence for the constitution is the choicest political virtue of a free people. Disregard of constitutional rights and duties is the fruitful seed of anarchy—a form of anarchy with which some American republics have been cursed for generations. A nation which has not learned to hold its constitution sacred and to obey readily even a law which is irksome, is not yet fit for self-government. A free people must be pre-eminently a law-abiding people—and the supreme law is the constitution.

6-112  
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